



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Ref: 8ENF-W-NP

CERTIFIED MAIL 7003 2260 0001 7778 2297
RETURN RECEIPT REQUESTED

Brandon Moore
Sampson Construction
2834 Jackson Blvd, Suite 102
Rapid City, SD 57702

Re: Order for Compliance under Section
309(a) of the Clean Water Act

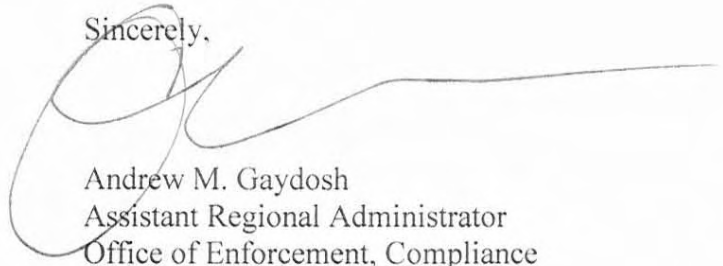
Dear Mr. Moore:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance (Order) issued to Sampson Construction. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, *et seq.* (CWA). The authority for such action is provided to EPA under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order describes the actions necessary in order for Sampson Construction to achieve compliance with the CWA.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an order issued pursuant to the CWA (33 U.S.C. § 1368).

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Liz Fagen, Technical Enforcement, at (303) 312-6095, and Chuck Figur, Enforcement Attorney, at (303) 312-6915.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
Kelli Buscher, SDDENR
Douglas Baldwin, SDDENR
Bruce Anderson, ACOE
Jerry Stiles, 28 CES/CEV



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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In the Matter of:)
)
Sampson Construction,)
a South Dakota Corporation)
)
Respondent.)

ORDER FOR COMPLIANCE

Docket No. **CWA-08-2011-0004**

LEGAL AUTHORITY

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Federal Water Pollution Control Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by any person found to be in violation of sections 301, 302, 306, 307, 308, 318, 402, and/or 405 of the Act, or of any permit condition or limitation implementing those sections. This authority has been properly delegated to the undersigned official.

FINDINGS OF FACT AND LAW

1. Section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).
2. Section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES) program, which is administered by EPA or a state with an approved permit program. The NPDES program authorizes the permitting authority to issue permits allowing discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.
3. A discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of a NPDES permit. 33 U.S.C. § 1342(p)(3)(A).
4. The regulations further defining requirements for NPDES permits for storm water discharges associated with industrial activity are found at 40 C.F.R. Part 122.
5. Storm water discharges associated with industrial activity subject to permitting requirements include discharges associated with construction activity. 40 C.F.R. § 122.26(b)(14)(x).
6. Each person who intends to discharge storm water associated with industrial activity must either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).

7. Respondent is a corporation, incorporated in the State of South Dakota, and doing business in the State of South Dakota.

8. Respondent is a "person" within the meaning of section 502(5) of the Act and therefore, subject to the requirements of the Act and regulations. 33 U.S.C. § 1362(5).

9. Respondent is engaged in construction activities at a site (site) located at Ellsworth Air Force Base (AFB), near Rapid City, SD.

10. The Ellsworth AFB lakes system discharges through unnamed tributaries, which flow to Box Elder Creek, which flows into the Cheyenne River, a "traditionally navigable water" as defined by the Army Corps of Engineers. The Cheyenne River empties into Lake Oahe, which flows into the Missouri River, which flows southeast and along the northeast border between South Dakota and Nebraska and into Missouri.

11. The Missouri River is an interstate, "navigable-in-fact" waterway. The tributaries of Box Elder Creek are "navigable waters" and "Waters of the United States," as defined by the Act and EPA regulations. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2, definition of "Waters of the United States", subsection (e).

12. Respondent engaged in construction activities at the site at all times relevant to this action.

13. Respondent is therefore engaged in an "industrial activity" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).

14. Storm water, snow melt runoff, surface runoff and drainage leave the site and flow into the AFB base lakes systems as well as unnamed tributaries surrounding the AFB.

15. The storm water runoff, snow melt runoff, and surface runoff and drainage from the site is "storm water" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).

16. The storm water runoff is associated with Respondent's construction activities and therefore constitutes "storm water discharge associated with industrial activity" defined under 40 C.F.R. § 122(b)(14)(x).

17. On October 14, 2008, respondent submitted a Notice of Intent (NOI) application for a general South Dakota Department of Environment and Natural Resources (SDDENR) NPDES permit for storm water discharges associated with its construction activities at the site.

18. SDDENR issued a general NPDES permit for stormwater discharges associated with construction activity, number SDR10E051, effective October 20, 2008 (permit). The permit sets forth storm water management requirements for Respondent's construction activities at the site.

19. The Respondent submitted a Notice of Intent for Reauthorization for continuing coverage under the 2010 General Permit on February 1, 2010.

20. The permit requires, among other things, that Respondent develop and implement an adequate storm water pollution prevention plan (SWPPP), conduct regular specified storm water inspections, and implement best management practices (BMPs). BMPs include structural controls (such as storm drain inlet protection) and management practices (such as minimizing any off-site pollutant discharges).

21. Authorized EPA employees entered the site with the consent of Respondent on May 11, 2010, to inspect it for compliance with the Act, permit and regulations.

22. During the inspection, Respondent provided a document labeled the "Environmental Protection Plan", which was indicated to be the SWPPP and construction activity records for the Base Engineering Administration Building project site to inspectors.

23. At the time of the inspection, a sitemap was located on the construction trailer wall and a copy was provided to inspectors

24. At the time of the inspection, and as described in detail in the Summary of Findings (Exhibit A to this Order), Respondent's SWPPP was deficient for the following reasons:

- a) The SWPPP was not signed and certified by an authorized representative.
- b) The SWPPP site description did not include all of the information required by the permit, including:
 - (1) A description of potential pollutant sources;
 - (2) Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, grubbing, or other construction activities during the life of the project;
 - (3) A description of the intended sequence of activities which disturb soil;
 - (4) A description of the soil within the disturbed area(s); and
 - (5) The name of the surface water(s) at or near the disturbed area that could potentially receive discharges from the project site.
- c) The SWPPP also did not include the following information required by the permit:
 - (1) Control measures regarding storm water for each major activity, including timeframe and operator responsible;
 - (2) A description of interim and permanent stabilization practices;
 - (3) Records of the dates of major site activities, when construction activities will temporarily or permanently cease, and when stabilization measures will be initiated;

- (4) A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff;
 - (5) A description of BMPs that will be installed to control storm water after construction is complete;
 - (6) A description of procedures to maintain vegetation, erosion and sediment control measures and other BMPs;
 - (7) A description of chemical, construction materials, and waste materials to be stored on-site and controls to minimize pollutants;
 - (8) Design rationale for sediment controls (in this case a sediment pond was part of the original design, but was later removed from the design); and
 - (9) Identification of allowable non-stormwater discharges and pollution prevention measures.
- d) The site map was not up to date with current site conditions and did not have all of the information required by the permit including:
- (1) Areas of disturbance;
 - (2) Structural and nonstructural controls;
 - (a) Silt fence;
 - (b) Stormwater inlets and protection; and
 - (c) Vehicle entrances.
 - (3) Stabilization practices;
 - (4) Surface waters;
 - (5) Discharges to surface waters; and
 - (6) Areas of concern, including waste storage and concrete washout area.

25. At the time of the inspection, Representatives provided copies of the site inspection checklists to inspectors.

26. At the time of the inspection, and as described in detail in Exhibit A, the inspection checklists did not have all of the information required by the permit:

- a) Site inspections were not performed at the required frequency of every seven (7) calendar days and within 24 hours of the end of a storm event that is 0.5 inches or greater. Approximately 20 inspections were missed between 06/15/09 through 05/11/10. The last inspection conducted was on 4/26/10, 15 days prior to the EPA inspection.
- b) It was unclear if Jeremy Muth was authorized or a qualified inspector.
- c) The self inspection did not identify BMP deficiencies. During the EPA site inspection multiple BMP deficiencies were observed.
- d) Corrective actions and maintenance items are not included on the inspection reports.

- e) The SWPPP and site map were not updated within 7 days after each inspection that reveals problems. At the time of the inspection the SWPPP and site map were not up to date.

27. At the time of the inspection, and as described in detail in Exhibit A, Respondent failed to implement BMPs at the storm drains to minimize pollutants from entering the storm drain and failed to implement/modify the BMPs at the construction sites to provide responsible stormwater management including:

- a) The silt fence was down or damaged in areas;
- b) The silt fence above the stormwater inlet was inundated with sediment;
- c) The silt fence near Bergstrom Court was not maintained;
- d) The inlet did not have inlet protection and sediment was observed above the inlet and in the gutter flowing to the inlet;
- e) Several areas of the site were being accessed without stabilized vehicle entrances;
- f) The two stabilized vehicle entrances needed maintenance;
- g) The stockpiles were not stabilized or protected;
- h) Sediment trackout/buildup was observed in various areas of the site;
- i) A large waste and concrete pile was observed onsite;
- j) The disturbed slope leading to the site stormwater inlet at the south site boundary was not stabilized and was eroding; and
- k) Disturbed areas along Bergstrom Court and Scott Dr. were not stabilized.

28. EPA sent the Respondent an inspection report on June 10, 2010 outlining the deficiencies, see Exhibit A, and required a response within 30 days of the receipt of the inspection report.

29. Respondent provided a response on July 19, 2010. The response provided addressed some of the violations outlined in the inspection report.

30. With its July 19, 2010, response, Respondent provided a copy of the "Environmental Protection Plan". It was the same document reviewed during the inspection and had not been updated with the required items.

31. The Respondent provided a site map with some of the required items included, however; the vehicle entrances and stabilization locations were not included in the updated map.

32. Respondent provided inspection reports for May and June, 2010. Respondent, however, missed approximately seven (7) required inspections between May 11, 2010 and June 24, 2010.

VIOLATIONS

COUNT I

(Failure to Develop and Maintain Adequate SWPPP)

33. Respondent's failure to develop and update its SWPPP and site map as required by the permit constitutes a violation of the Act. 33 U.S.C. §§ 1311, 1342.

COUNT II

(Failure to implement and maintain stormwater BMPs)

34. Respondent's failure to implement and maintain stormwater BMPs as required by the permit constitutes a violation of the Act. 33 U.S.C. §§ 1311, 1342.

COUNT III

(Failure to Conduct Adequate Stormwater Inspections)

35. Respondent's failure to conduct adequate inspections at the specified frequency as required by the permit constitutes a violation of the Act. 33 U.S.C. §§ 1311, 1342.

ORDER

Respondent is ordered to perform the following actions:

36. Within 10 days of receipt of this Order, submit a written notice of intent to comply with the requirements of this Order to EPA and SDDENR. The written notice may be transmitted by electronic correspondence, to: Liz Fagen at fagen.elizabeth@epa.gov; Darcy O'Connor at occonnor.Darcy@epa.gov; and Douglas Baldwin at Douglas.Baldwin@state.sd.us.

37. Within 10 days of the receipt of this Order, contact Liz Fagen at (303-312-6095) to set up a conference call to discuss this Order for Compliance.

38. Within 3 days of receipt of this Order, the Respondent must begin to conduct inspections every seven (7) days and within 24 hours of the end of a rain event that is 0.5 inches or greater.

39. Within 20 days of receipt of this Order, provide EPA a copy of the site specific and up to date SWPPP including all of the requirements required under the permit, and as outlined in the June 10, 2010 inspection report and this Order.

40. Within 20 days of receipt of this Order, provide EPA a copy of the site specific and up to date site map including all of the requirements required under the permit and as outlined in the June 10, 2010 inspection report and this Order.

41. Beginning with first calendar quarter of 2011, Respondent must provide the site inspection reports on a quarterly basis. These reports are due April 15, for the first quarter, July 15, October 15, and January 15, and continuing through the termination of the project.

42. Within 20 days of receipt of this Order, conduct a meeting with the 28 Civil Engineering Squadron/Civil Environmental Management (CES/CEV) to review any impact to the AFB's Base Lakes System that may have occurred as a result of ground disturbance activities.

43. Within 20 days of receipt of this Order, conduct a meeting with the CES/CEV and the Army Corps of Engineers to review coordination regarding future projects to minimize and/or prevent future impacts to the AFB's base lakes system.

44. Within 10 days of the coordination meeting with CES/CEV and the Army Corps of Engineers, provide EPA a summary letter of meeting, describing the agreed upon coordination activities.

OTHER PROVISIONS

45. All related correspondence, plans, schedules, and reports, shall be sent to the following addresses:

Liz Fagen (8ENF-W-NP)
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
1595 Wynkoop Street
Denver, Colorado 80202-1129

And

Douglas Baldwin
Natural Resources Engineer
Surface Water Quality Program
South Dakota Department of Environment and Natural Resources
2050 West Main, Suite 1
Rapid City, South Dakota 57702-2493

46. Any failure to comply with the requirements of this Order shall constitute a violation of the Order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.

47. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's Federal NPDES Permit which remains in full force and effect, or of any other legal responsibilities or liability.

48. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes the assessment of civil penalties of up to \$37,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319.

Date: 3-8-11

By: 

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice