

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)
)
IOWA DEPARTMENT OF)
TRANSPORTATION)
)
and)
)
SCHECKEL CONSTRUCTION, INC.)
)
Respondents)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
)

Docket No. CWA-07-2010-0053

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

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 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondents are the Iowa Department of Transportation ("IDOT"), a state agency in the State of Iowa ("Iowa") and Scheckel Construction, Inc., a corporation authorized to conduct business in Iowa.

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 stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater 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.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater 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 stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “stormwater 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 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 authorized states for violations of the CWA.

10. IDNR issued a general permit for the discharge of stormwater under the NPDES, General Permit No. 2. The general permit governs stormwater discharges associated with construction or land disturbance activity. The general permit became effective October 1, 2002, through October 1, 2007. This permit was reissued on October 1, 2007, and expires on October 1, 2012.

Factual Background

11. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondents were the owner and/or operator of a construction site known as the U.S. Highway 30 Road Construction Project, located near and through the cities of Tama and Toledo, Iowa (“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.

13. Stormwater, snow melt, surface drainage and runoff water leaves the Site and flows into Tama Mud Creek and an unnamed tributary, which flow into the Iowa River. The runoff and drainage from the Site is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

15. The Site has "stormwater discharge 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).

16. Respondents discharged pollutants into "navigable water" as defined by CWA Section 502(7), 33 U.S.C § 1362(7).

17. Stormwater runoff from Respondents' construction Site results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. Respondents' 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 IDOT applied for and was issued NPDES permit coverage under the general permit described in Paragraph 10 above. IDNR assigned Respondent IDOT Permit No. IA-15984-15763 providing Respondents with NPDES permit coverage through July 15, 2011.

20. Respondents' permit requires the permittee to develop a Stormwater Pollution Prevention Plan ("SWPPP") that identifies any contractors that will be used to implement the plan and each contractor or subcontractor must sign a certification statement. Upon signing the certification, the contractor or subcontractor is a co-permittee with the owner and other co-permittee contractors.

21. Respondent Scheckel Construction, Inc. signed this certification statement, in accordance with Part IV.G of Respondents' permit, and is thus a co-permittee with IDOT on the U.S. Highway 30 Construction road construction site.

22. Respondents' permit coverage is for the U.S. Highway 30 Road Construction Project around and through the cities of Tama and Toledo, Iowa, including the construction of a four lane by-pass over Deer Creek. The total length of the road building project is approximately 7.5 miles and the total disturbed area is 420 acres. Respondent Scheckel Construction, Inc. is a co-permittee with Respondent IDOT for the portions of the Site that extend from Station 173+40.0 to Station 188+50.0 and from Station 249+23.186 to 268+50.0.

23. On or about September 10-11, 2009, EPA inspectors 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 management of stormwater at the site in accordance with the CWA.

Findings of Violation

Failure to Properly Design and Maintain Best Management Practices (BMPs)

24. The facts stated in Paragraphs 11 through 23 above are herein incorporated.

25. Part IV of Respondents' permit requires that the Respondents develop a plan that shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharge to ensure compliance with the terms and conditions of Respondents' permit. Part IV Section D.2 of Respondents' permit requires that the Respondents' SWPPP shall include structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the Site.

26. Part VI, Section M of Respondents' permit requires the permittee, at all times, to properly operate and maintain all systems of treatment and control that are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of the SWPPP.

27. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents had not adequately maintained silt fencing. Specifically, approximately one hundred feet of silt fences were not properly maintained, and silt fences were undermined, overrun, or filled with sediment.

28. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents had not adequately designed BMPs to protect receiving waters. Respondents' failure to adequately design BMPs resulted in the discharge of sediment offsite.

29. Respondents' failure to properly design and maintain BMPs is a violation of Respondents' 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).

Failure to Develop an Adequate Stormwater Pollution Prevention Plan (SWPPP)

30. The facts stated in Paragraphs 11 through 23 above are herein incorporated.

31. Part IV of the Respondents' permit requires that Respondents develop a SWPPP that shall identify potential sources of pollution which may reasonably be expected to affect the

quality of stormwater discharge from the construction activities at Respondents' construction site. The SWPPP shall describe and ensure the implementation of the practices which will be used to reduce the pollutants in stormwater discharge and to assure compliance with the terms and conditions of this permit, including the location of structural and nonstructural controls. The SWPPP shall be retained at the construction site from the date construction activities begin to the date of final stabilization.

32. The inspection referenced in Paragraph 23 above, revealed that Respondents' SWPPP failed to adequately describe BMPs and stormwater management practices by failing to identify locations for the installation of BMPs, particularly silt fences, ditch locations, and locations of temporary sedimentation basins. Additionally, Respondents' SWPPP was not available onsite while construction activities were ongoing.

33. Respondents' failure to adequately develop a SWPPP and to retain the SWPPP at the construction site is a violation of Respondents' 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).

Failure to Perform and Document Site Inspections

34. The facts stated in Paragraphs 11 through 23 above are herein incorporated.

35. Part IV, Section D.4 of the Respondents' permit requires that qualified personnel shall inspect areas of the construction site that have not been finally stabilized at least once every seven calendar days and within twenty-four hours of the end of a storm with rainfall that is .5 inches or greater.

36. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents, on at least eleven occasions, did not perform and document Site inspections at a minimum of every seven calendar days, as required by Respondents' permit.

37. Respondents' failure to perform and document Site inspections is a violation of Respondents' 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).

Order For Compliance

38. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondents are hereby ORDERED to take the actions described in Paragraphs 39 through 41.

39. Within thirty (30) days of the Effective Date, as defined in Paragraph 50 herein, Respondents 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 Respondents' permit.

Submissions

40. Within thirty (30) days of the effective date of this Order, the Respondents shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

41. In the event that Respondents believe complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondents 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 and why such actions are sufficient to correct the violations. 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.

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

Mr. Michael Boeglin
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

Acceptance of Submissions and Incorporation into the Order for Compliance

43. Upon receipt, EPA will review all documents submitted by Respondents pursuant to Paragraphs 40 or 41, and accept such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 44, below. Upon acceptance, documents submitted under Paragraphs 40 or 41 above, or resubmitted pursuant to Paragraph 44, below, shall be deemed incorporated into and become enforceable under this Order, or at EPA's discretion, shall be incorporated into, and become enforceable under, a separate order issued under the authority of the CWA.

Modification and Resubmission of Documents

44. If required by EPA pursuant to Paragraph 43 above, Respondents shall, within fifteen (15) days of receipt of any written comments from EPA regarding the documents submitted by

Respondents pursuant to this Order, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA. The parties may agree, in writing, to a longer period of time for resubmission of such documents.

Certification

45. All submissions made by Respondents to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR 122.22:

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 submissions of false information.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

46. Compliance with the terms of this Order shall not relieve Respondents 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. EPA retains the right to seek any and all remedies available under Sections 309 of the CWA, 33 U.S.C. § 1319, 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 CWA 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 Respondents' facility, and/or to request additional information from Respondents, 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 Respondents, is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

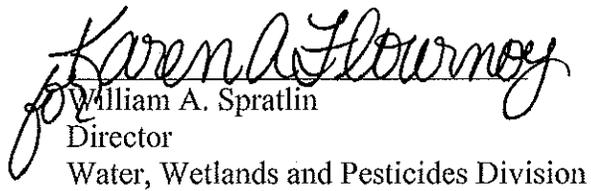
Effective Date

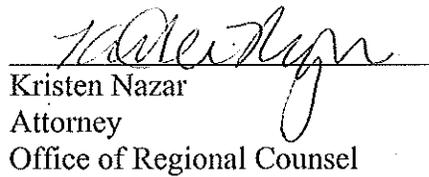
50. The terms of this Order shall be effective and enforceable against Respondents upon the date of their receipt of an executed copy of the Order.

Termination

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

Issued this 22nd day of February 2010.


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


Kristen Nazar
Attorney
Office of Regional Counsel

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 and Administrative 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 Order for Compliance by first class certified mail, return receipt requested, to:

John M. Smythe, P.E.
Office Director, Office of Construction
Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

Patricia A. Scheckel, Registered Agent
Sheckel Construction, Inc.
21334 Highway 62 62
Bellevue, Iowa 52031.

Sent via first class mail to:

Ed Tormey
Bureau Chief, Legal Services
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353

Jim Stricker
Iowa Department of Natural Resources, Field Office #5
401 SW 7th, Suite 1
Des Moines, Iowa 50309.

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