

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)
)
COUNCIL BLUFFS)
AIRPORT AUTHORITY)
)
Respondent)
)
Proceeding under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
)

Docket No. CWA-07-2011-0104
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. Respondent is the Council Bluffs Airport Authority, an entity created pursuant to chapter 330A of the 1995 Iowa Code.

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.

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 a construction site known as the Council Bluffs Airport annex construction project, located in the City of Council Bluffs, Iowa (“the Site”). Construction activities occurred at the Site including clearing, grading, and excavation of the site as well as the construction of a 5500-foot runway which disturbed eighty-six (86) or more acres of total land area.

13. Stormwater, snow melt, surface drainage and runoff water from the runway area discharges at approximately seven (7) locations and ultimately drains into a tributary of Little Mosquito Creek, while the southern areas drain to a tributary of Pony Creek. 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. Respondent discharged pollutants into “navigable water” as defined by CWA Section 502(7), 33 U.S.C § 1362(7).

17. Stormwater runoff from Respondent’s 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. 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 Council Bluffs Airport Authority applied for and was issued NPDES permit coverage under the general permit described in Paragraph 10 above. IDNR assigned Respondent Council Bluffs Airport Authority Permit No. IA-8347-8245, providing Respondent with NPDES permit coverage through September 30, 2011.

20. The Iowa Department of Natural Resources conducted several site inspections and site visits at the Site since Council Bluffs Airport Authority received NPDES permit coverage. IDNR has to date issued six Notices of Violation to the Council Bluffs Airport Authority.

21. Respondent’s permit coverage is for a runway construction project of the Council Bluffs Airport in Council Bluffs, Iowa.

22. On or about March 16, 2011, an EPA inspector 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 Respondent’s NPDES permit and the CWA.

Findings of Violation

Failure to Install Best Management Practices (BMPs)

23. The facts stated in Paragraphs 11 through 22 above are herein incorporated.

24. Part IV of Respondent’s permit requires that the Respondent 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 Respondent’s permit. Part IV Section D.2 of Respondent’s permit requires that the Respondent’s SWPPP shall

include structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the Site.

25. Part IV, Section D.2, A.1 of Respondent's permit requires that stabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where construction activity will not occur for a period of 21 or more calendar days later than the 14th day after no construction activity has occurred in such area.

26. Part IV, Section D.2, B.2 of Respondent's permit requires the installation of velocity dissipation devices at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected.

27. The EPA inspection referenced in Paragraph 22 above, revealed that no velocity dissipation device had been installed at the outlet from the east sedimentation basin.

28. The EPA inspection referenced in Paragraph 22 above, revealed that Respondent failed to stabilize the area near the northeast corner of the site which was regarded to restrict flow into the erosion cut of the northeast end of the runaway.

29. Respondent's failure to install BMPs 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).

Best Management Practices (BMPs) Not Properly Designed, Implemented or Maintained

30. The facts stated in Paragraphs 11 through 22 above are herein incorporated.

31. Part VI, Section M of Respondent's 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 stormwater pollution prevention plan.

32. The EPA inspection referenced in Paragraph 22 above, revealed that Respondent had not adequately maintained silt fencing. Specifically, three consecutive silt fence ditch checks in the drainage channel below the southwest sedimentation basin were undermined. A series of ditch checks in a channel were damaged or were never properly fastened to their supports. Another series of silt fences on the east side of the runway were undermined.

33. The EPA inspection referenced in Paragraph 22 above, revealed that Respondent did not maintain (clean-out) basins. The EPA inspector review of Respondent's inspection revealed sediment accumulation in sediment basins over 80% of the basin's capacity, severely limiting the ability of the basin to capture sediment.

34. The EPA inspection referenced in Paragraph 22 above, revealed that Respondent did not properly design and implement a BMP sufficient to control stormwater discharges from the dramatic erosion cut bordering northeast corner of the safety area of the north end of Runway 18/36. Specifically, Respondent installed a sediment basin that was not sufficient to control discharges from this area. The basin that was installed in December 2009 catastrophically failed in April 2010.

35. Respondent's failure to properly design, implement or maintain BMPs 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).

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

36. The facts stated in Paragraphs 11 through 22 above are herein incorporated.

37. Part IV of the Respondent's permit requires that Respondent 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 Respondent's 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 addressing any sedimentation basins or storm water detention basins. The SWPPP shall be retained at the construction site from the date construction activities begin to the date of final stabilization.

38. The inspection referenced in Paragraph 22 above, revealed that Respondent's SWPPP (1) 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; (2) failed to cover the entire project area; and (3) failed to address basin design and capacity.

39. The inspection referenced in Paragraph 22 above, revealed that Respondent's SWPPP was not available onsite while construction activities were ongoing.

40. The inspection referenced in Paragraph 22 above, documented a dramatic erosion cut bordering the northeast corner of the safety area at the north end of Runway 18/36. This is a canyon-like crevasse approximately 300-400 feet in length and up to 30-40 feet in depth and breadth. This canyon-like crevasse discharged an excessive amount of sediment offsite. Respondent failed to develop an adequate SWPPP that called for the proper design of BMPs and appropriate installation and maintenance of these BMPs to prevent this excessive erosion.

41. Respondent's failure to develop and implement an adequate SWPPP and to retain the SWPPP at the construction site 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).

Failure to Update the SWPPP

42. The facts stated in Paragraphs 11 through 22 are herein incorporated.

43. Part IV Section C of the Respondent's permit requires that Respondent properly implement and adjust the SWPPP "whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharge...."

44. The EPA inspection referenced in Paragraph 22 above, revealed that the Respondent's SWPPP had not been thoroughly updated since 2004. The SWPPP is, therefore, not representative of current site conditions. Moreover, the SWPPP had not been updated despite the ongoing noncompliance at the site, particularly the excessive discharge of sediment offsite that has occurred after the date of the SWPPP.

45. Respondent's failure to thoroughly update the SWPPP 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).

Failure to Perform and Document Site Inspections

46. The facts stated in Paragraphs 11 through 22 above are herein incorporated.

47. Part IV, Section D.4 of the Respondent's permit requires that qualified personnel 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 0.5 inches or greater. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP and actions taken in accordance with Part IV, Section D.4.B of the permit shall be made and retained as part of the SWPPP for at least three years after final stabilization has been achieved.

48. The EPA inspection referenced in Paragraph 22 above, revealed that there was a period of eighty-eight (88) weeks when no inspections were conducted and documented. Furthermore, the inspection reports that were available for review conveyed little or no useful information about site conditions at the time the inspections were conducted.

49. Respondent's 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).

Order For Compliance

50. 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), Respondent is hereby ORDERED to take the actions described in Paragraphs 51 through 57.

51. Within thirty (30) days of the Effective Date, as defined in Paragraph 64 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 Respondent's permit.

52. Within 45 days of the Effective Date as defined in Paragraph 64, herein, Respondent shall thoroughly revise the SWPPP in accordance with the requirements of Respondent's NPDES permit. A copy of the revised SWPPP shall be submitted in accordance with Paragraph 58, below.

Submissions

53. Within thirty (30) days of the effective date of this Order, the Respondent 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.

54. In the event that Respondent believe complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the 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 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.

55. If applicable, the EPA will review the Plan and Schedule submitted by Respondent pursuant to Paragraph 54. The EPA shall approve the Schedule or require modification and resubmission of a portion or all of the Plan and/or Schedule pursuant to Paragraph 56, below. Upon approval, the Schedule shall be deemed incorporated into and become enforceable under this Order. Review and comment on the Plan and approval of the Schedule by the EPA does not relieve Respondent of the responsibility to comply with its NPDES permit, Storm Water General Permit, the CWA, applicable State law, or this Order.

56. If required by the EPA pursuant to Paragraph 55, above, the Respondent shall within forty-five (45) days of receipt of any written comments from EPA regarding the Plan and/or Schedule, make modifications and changes to it as directed by EPA, and resubmit the Plan and/or Schedule to the EPA. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

57. Respondent shall submit to EPA on a quarterly basis (September 30, December 30, March 30 and June 30), until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 66, below, a description of activities completed under this Order within the quarterly reporting period, including, if applicable, a report of activities to implement the provisions of the Plan.

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

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

Certification

59. All submissions made by Respondent 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

60. 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.

61. 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

62. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's Site, 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

63. 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

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

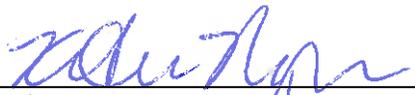
Termination

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

Issued this 12th day of September, 2011.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division



Kristen Nazar
Assistant Regional Counsel
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 Docket 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:

Mr. Don Smith
Executive Director
Council Bluffs Airport Authority
101 McCandless Lane
Council Bluffs, Iowa 51503

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

Thad Nanfito
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50522

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Date

