

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Michael L. Collins)
520 21st Avenue)
Council Bluffs, Iowa 51501)

Respondent)

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

) Docket No. CWA-07-2009-0042

) 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 Michael L. Collins, 520 21st Avenue, Council Bluffs, Iowa 51501.

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. 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 Traceview Estates Subdivision located West of County Road G-66, North of Brush Lane, Council Bluffs, 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 Respondent's facility and flows into two unnamed tributaries of Pony Creek. The runoff and drainage from Respondent's facility 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 applied for and was issued NPDES permit coverage under the general permit described in Paragraph 10 above. IDNR assigned Respondent Permit No. IA-8984-8785. Respondent submitted a permit renewal application on April 24, 2006. This renewed permit provided Respondent with NPDES permit coverage through May 1, 2007.

20. In July 2007, Respondent sent a letter to IDNR requesting his permit coverage be terminated. Respondent did not utilize the Notice of Discontinuation form required to terminate permit coverage.

21. On October 12, 2007, 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 inspection observed violations of the CWA. EPA executed an Expedited Settlement Agreement with the Respondent on July 8, 2008, for settlement of these violations.

22. During the October 12, 2007 EPA inspection, the EPA inspector informed Respondent of his duty to submit a Notice of Discontinuation with IDNR in order to terminate NPDES permit coverage.

23. On April 10, 2008, Respondent filed a Notice of Permit Discontinuation with IDNR. Respondent's NPDES Permit coverage for the Traceview Estates Subdivision officially ended on May 5, 2008.

24. On November 17-19, 2008, 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

Discharge Without a Permit

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

26. The Code of Federal Regulations, 40 CFR 122.26, and the Iowa Administrative Code, 567-60, state that industrial and commercial activities that are classified as having "storm water discharge associated with industrial activity" require NPDES permit coverage.

27. The EPA inspection referenced in Paragraph 24 above, revealed that Respondent discharged stormwater associated with an industrial activity after termination of its general permit in May 2008 and without obtaining new or continuing NPDES permit coverage.

28. Respondent's discharge of stormwater without NPDES permit coverage 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

29. 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 30 through 33.

30. Within thirty (30) days of the Effective Date, as defined in Paragraph 41 herein, Respondent shall come into compliance with all requirements of the CWA by demonstrating either (i) no further discharge is occurring at the Site, the Site has achieved final stabilization and Respondent has complied with all applicable requirements for properly terminating NPDES permit coverage; or (ii) Respondent has obtained NPDES permit coverage and has come into compliance with all requirements of that permit.

31. If Respondent intends to comply with this Order pursuant to Paragraph 30(i) above, Respondent shall submit to EPA within the thirty (30) day time frame, at a minimum, the following information to demonstrate such compliance:

- a) Documentation that no further discharge is occurring at the Site, such as photographs and a certified statement from Respondent;
- b) Documentation that the Site has achieved final stabilization, such as invoices, photographs and a certified statement from Respondent; and
- c) Documentation that Respondent has complied with all applicable requirements for properly terminating NPDES permit coverage.

32. If Respondent cannot demonstrate compliance with the requirements of Paragraph 30(i) of this Order, Respondent shall:

- a) Within the thirty (30) day time frame provided in Paragraph 30, submit documentation to EPA of Respondent's application for and receipt of an NPDES permit, and a copy of Respondent's Storm Water Pollution Prevention Plan, as required by Iowa General Stormwater Permit Number 2;
- b) Within sixty (60) days after the Effective Date, as defined in Paragraph 41 herein, and every ninety (90) days thereafter until EPA terminates this Order pursuant to Paragraph 42, or upon written notice by EPA to cease providing such reports, Respondent shall submit to EPA copies of site inspection reports completed during the preceding ninety (90) day period, written as required by Iowa General Stormwater Permit Number 2; and
- c) Within thirty (30) days of completing all applicable requirements for properly terminating Respondent's NPDES permit coverage, Respondent shall submit a copy of the Notice of Discontinuation submitted to IDNR and all information received from IDNR regarding final termination of permit coverage. Respondent shall further submit documentation to EPA demonstrating that the Site has achieved 70% stabilization, copies of the Notice of Termination for any lots that have been sold since construction began on Site, and proof that these Notices have been properly filed with IDNR, as required by Iowa General Stormwater Permit Number 2.

33. 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

Approval of Submissions and Incorporation into the Order for Compliance

34. Upon receipt, EPA will review all documents submitted by Respondent pursuant to Paragraphs 30 through 32, and approve such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 35, below. Upon approval, documents submitted under Paragraphs 30 through 32 above, or resubmitted pursuant to Paragraph 35, below, shall be deemed incorporated into and become enforceable under this Order For Compliance, 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

35. If required by EPA pursuant to Paragraph 34 above, Respondent shall, within fifteen (15) days of receipt of any written comments from EPA regarding the documents submitted by Respondent pursuant to this Order on Consent, 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

36. All submissions made by Respondent to EPA pursuant to the requirements of this Order on Consent 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

37. 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.

38. 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

39. 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

40. 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.

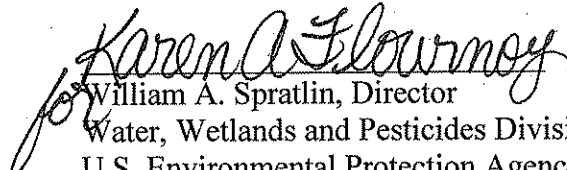
Effective Date

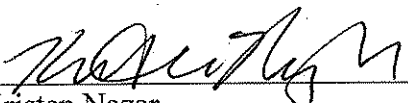
41. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

Termination

42. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 9th day of April, 2009.


for William A. Spratlin, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101


Kristen Nazar
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
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 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:

Michael L. Collins
Developer, Traceview Estates Subdivision
520 21st Avenue
Council Bluffs, Iowa 51501

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

Dan Stipe
Iowa Department of Natural Resources Field Office #4
1401 Sunnyside Lane
Atlantic, Iowa 50022

APR 15 2009

Date

