

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 )  
)  
McBride & Son Homes, Inc. ) Docket No. CWA-07-2006-0197  
#1 McBride & Son Corporate Center Drive )  
Chesterfield, Missouri 63005 ) **CONSENT AGREEMENT**  
) **FINAL ORDER**  
Respondent )  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and McBride & Son Homes, Inc. (McBride)(Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement/Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

### Parties

3. Respondent is McBride, a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

5. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

6. The Parties agree to the terms of settlement of this matter as set forth hereafter in this Consent Agreement/Final Order.

### Statutory and Regulatory Framework

7. 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.

8. 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.

9. 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 with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require 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.

12. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water 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, or less than five (5) acres if that land area is part of a larger common plan of development or sale.

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

14. The MDNR implemented General Permits for the discharge of storm water under the NPDES, Permit Nos. **MO-R10100 and MO-R10900** (The General Permits). The permits governs storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone). General Permits MO-R10900 also applies to land disturbances near valuable resource waters.

#### Factual Background

15. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. On or about February 19, 2002, McBride submitted a Notice of Intent (NOI), as the owner, for coverage under the MDNR General Permit for a construction site known as Winghamen-Phase III, Boardwalk Meadows (“Boardwalk Meadows Site”) which is located at Redhawk Parkway, south to Dardenne Creek, north to Phoenix Parkway, St. Charles County, Missouri. Construction activities occurred at the Sites 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.

17. Permit #MO-R109641 was issued to McBride and became effective for the Boardwalk Meadows Site on May 1, 2002, with a scheduled expiration date of March 7, 2007.

18. On or about September 26, 2003, McBride submitted a Notice of Intent (NOI), as the owner, for coverage under the MDNR General Permit for a construction site known as Kings Gate at Winghamen (“Kings Gate Site”) which is located at on Phoenix Parkway South of Winghamen Boulevard, St. Charles County, Missouri. Construction activities occurred at this 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.

19. Permit #MO-R105888 was issued to McBride and became effective for the Kings Gate Site on October 8, 2003, with a scheduled expiration date of February 7, 2007.

20. Storm water, snow melt, surface drainage and runoff water leaves Respondent's Boardwalk Meadows Site and Kings Gate Site and goes into unnamed tributaries to Dardenne Creek, then to Dardenne Creek. The runoff and drainage from Respondent's Sites is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

22. Respondent's storm water runoff is the "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

23. The Boardwalk Meadows Site and the Kings Gate Site are each a "point source" which caused the "discharge of pollutants" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. Respondent discharged pollutants from the Boardwalk Meadows Site and the Kings Gate Site into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. 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.

26. On approximately August 10 through 12, 2004, EPA performed an inspection of the Boardwalk Meadows Site and the Kings Gate 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 treatment and disposal of storm water at each Site in accordance with the CWA.

27. Permit #MO-R109641 for the Boardwalk Meadows Site was active and in effect through at least August 12, 2004, when the EPA inspection identified in Paragraph 26 above was performed.

28. Permit #MO-R105888 for the Kings Gate Site was active and in effect through at least August 12, 2004, when the EPA inspection identified in Paragraph 26 above was performed.

Findings of Violation

Count 1

**Failure to Maintain Pollution Control Measures**

29. The facts stated in Paragraphs 15 through 28 above are herein incorporated.

30. Paragraph 11 of the Requirements and Guidelines section of Respondent's General Permit for each Site, identified in Paragraphs 17 and 19 above, states in part that Respondent shall at all times maintain all pollution control measures and systems in good order to achieve compliance with the terms of the general permit.

31. The EPA inspection referenced in Paragraph 26 above, revealed that Respondent failed to maintain pollution control measures and systems at each Site, as follows:

a. Boardwalk Meadows Site:

i) at least 9 of 16 curb drain inlets were in need of repair or replacement and were not providing adequate protection from entry of pollutants into the storm drains.

b. Kings Gate Site:

- i) at least 4 of 9 curb drain inlets were in need of repair and/or replacement and were not providing adequate protection from entry of pollutants into the storm drains;
- ii) approximately fifty feet of silt fence located just south of Kings Gate Drive and east of Phoenix Parkway was in need of repair or replacement because it was overtopped and sediment was deposited onto the property just south of the Site;
- iii) approximately fifty feet of silt fence located at the south end of the Site was in need of repair or replacement because it was full and almost overtopped; and
- iv) approximately two hundred feet of silt fence located at the southwest end of the Site was in need of repair or replacement because it was overtopped, undercut or blown-out, and in two areas along the silt fence, sediment had escaped and flowed into the unnamed tributary of Dardenne Creek.

32. Respondent's failure to properly maintain its pollution control measures at the Boardwalk Meadows Site and the Kings Gate Site is a violation of Paragraph 11 of the Requirements and Guidelines section of Respondent's General Permit for each Site, 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).

**Count 2**

**Failure to Install Appropriate Best Management Practices**

33. The facts stated in Paragraphs 15 through 30 above are herein incorporated.

34. Paragraph 8d of the Requirements and Guidelines section of Respondent's General Permit for each Site state in part that where soil disturbing activities cease in an area for more than fourteen days, the disturbed area must be protected from erosion by stabilizing the area with mulch or other similarly effective erosion control BMPs.

35. Paragraph 8e of the Requirements and Guidelines section of Respondent's General Permit for each Site state in part that storm water runoff from disturbed areas which leave the site shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the land disturbance site.

36. The EPA inspection referenced in Paragraph 26 above, revealed that Respondent failed to install appropriate best management practices at each Site, as follows:

a. Boardwalk Meadows Site:

- i) except for some preserved vegetation around the east and west borders of the Site, soil disturbance had occurred over the entire Site, however, there was no soil stabilization on the Site other than the paved areas;
- ii) one of the sixteen storm water curb inlets on the Site lacked any type of protection device; and
- iii) one of the thirteen storm water area inlets on the Site lacked filter fabric.

b. Kings Gate Site:

- i) soil disturbance had occurred over the entire Site, however, there was no soil stabilization on the Site other than the paved areas.

37. Respondent's failure to install appropriate impediments to sediment movement and storm drain inlet protection is a violation of Paragraph 8d and e of the Requirements and Guidelines section of Respondent's General Permit for each Site, 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).

### **Count 3**

#### **Failure to Have an Adequate SWPPP**

38. The facts stated in Paragraphs 15 through 35 above are herein incorporated.

39. Paragraph 7 of the Requirements and Guidelines section of Respondent's General Permit for each Site identifies the primary requirement of the permit as development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) that incorporates required practices identified within the permit, incorporates erosion control practices specific to site conditions, and provides for maintenance and adherence to the SWPPP. This Paragraph of the permit further requires that, "before removing any site vegetation, disturbing earth or submitting an application, the permittee shall develop a SWPPP that is specific the land disturbance activities at the site."

40. Paragraph 8 of the Requirements and Guidelines section of Respondent's General Permit for each Site specifies ten categories of information and practices that a permittee must provide for in the SWPPP. In summary, these requirements of the SWPPP include, but are not limited to:

- a. Site Description - sufficient information to be of practical use to contractors and site construction workers to guide the installation and maintenance of BMPs;
- c. Description of Best Management Practices - a description of the BMPs that will be used at the site and provide certain enumerated information for each specific instance where a BMP is to be installed;
- e. Installation - proper installation of BMPs at the locations and relative times specified in the SWPPP, and bench marks for proper installation and operation and maintenance of drainage course changes; and
- h. Sedimentation Basins - a sedimentation basin for each drainage area with 10 or more acres disturbed at one time, and where use of a sedimentation basin of the specified size is impractical, an evaluation and specific identification of other similarly effective BMPs to be employed to control erosion and sediment delivery.

41. The EPA inspection referenced in Paragraph 26 above, revealed that Respondent failed to develop and implement an adequate SWPPP for each Site that, except for a grading plan for each Site, contained any site-specific information addressing the requirements of Paragraphs 7 and 8 of the Requirements and Guidelines section of Respondent's General Permit, as identified in Paragraphs 26 and 28 above.

42. Respondent's failure to develop and implement an adequate SWPPP for each Site is a violation of Paragraphs 7 and 8 of the Requirements and Guidelines section of Respondent's

General Permit for each Site, 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).

Proposed Administrative Penalty

43. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region 7 hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondent for the violations cited above, in the amount of \$34,000.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.
2. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement/Final Order addresses all civil administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.
7. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a penalty of \$34,000 as set forth in Paragraph 1 of the Final Order.

10. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

## **FINAL ORDER**

### **A. Payment Procedures**

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Thirty-Four Thousand Dollars (\$34,000) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

U.S. EPA Region 7  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number on the check. A copy of the check shall also be mailed to:

Patricia Gillispie Miller  
CNSL  
U.S. EPA Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

### **B. Parties Bound**

4. This Final Order portion of this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for

Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

### C. General Provisions

5. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement/Final Order by initiating a judicial or administrative action under Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement/Final Order.

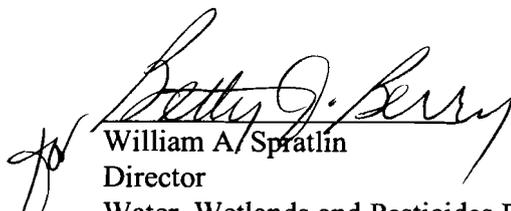
7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

01/24/07  
Date

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region 7

  
Patricia Gillispie Miller  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

RESPONDENT:  
McBride & Son Homes, Inc.

11/17/06  
Date

By: [Signature], Sec  
Signature

Jeffrey M. Berger  
Printed Name

Secretary  
Title



IT IS SO ORDERED. This Final Order shall become effective immediately.

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer

Date January 25, 2007

IN THE MATTER OF McBride & Son Homes, Inc., Respondent  
Docket No. CWA-07-2006-0197

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Patricia Gillispie Miller  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Skip Stone  
Project Manager  
McBride & Son Homes, Inc.  
#1 McBride & Son Corporate Center Drive  
Chesterfield, Missouri 63005

Brian E. McGovern  
McCarthy, Leonard, Kaemmerer,  
Owen, McGovern & Striler, LC  
400 South Woods Mill Road  
Suite 250  
Chesterfield, Missouri 63017-3481

Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Dept. Of Natural Resources  
PO Box 176  
Jefferson City, Missouri 65102

Dated: 1/25/07



Kathy Robinson  
Hearing Clerk, Region 7