

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	)	
	)	
HIDC, L.L.C.	)	Docket No. CWA 07-2010-0149
801 Birch Street	)	
Hollister, MO 65672,	)	FINDINGS OF VIOLATION,
	)	ORDER FOR COMPLIANCE
and	)	
	)	
Birch Street Development, L.L.C.	)	
801 Birch Street	)	
Hollister, MO 65672,	)	
	)	
Respondents	)	
	)	
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	

**I. Preliminary Statement**

- 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.
- Respondent HIDC, L.L.C. (HIDC), is a corporation registered under the laws of the State of Missouri and is authorized to conduct business in the State of Missouri.
- Respondent Birch Street Development, L.L.C. (Birch Street), is a corporation registered under the laws of the State of Missouri and is authorized to conduct business in the State of Missouri.

**II. Statutory and Regulatory Framework**

4. 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.

5. 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.

6. 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 to the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

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

8. 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.

9. 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 acres of total land area which are not part of a larger common plan of development or sale.

10. The Missouri Department of Natural Resources (MDNR) is the state agency with authority to administer the federal NPDES program in Missouri 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.

11. The MDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. MOR109 on March 8, 2007. The permit 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 and/or land disturbance activity that is reasonably certain to cause pollution to waters of the state).

### **III. Factual Background**

#### **A. General Statement of Facts**

12. Both HIDC and Birch Street share a registered agent and owner/operator, Justin Gage.

13. The sites owned by HIDC and Birch Street, described in detail below, are contiguous, adjacent, and form one site that is part of a common development plan.

**B. HIDC, L.L.C.**

14. Respondent HIDC is a limited liability company and is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. At all times relevant to this action, Respondent HIDC was the owner and/or operator of a construction site known as Hollister Water Park, located at the southeast corner of Hollister Parkway and Birch Street in Hollister, Missouri ("Hollister Water Park"). Construction activities occurred at the Hollister Water Park including clearing, grading, grubbing, and excavation which disturbed five (5) acres or more 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.

16. At all times relevant to this action, Respondent HIDC was the owner and/or operator of a construction site known as Hollister Parkway West, located at Industrial Parkway-West, Hollister, Missouri ("Hollister West"). Construction activities occurred at Hollister West including clearing, grading, grubbing, and excavation which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

17. At all times relevant to this action, Respondent HIDC was the owner and/or operator of a construction site known as Hollister Parkway East, located at Industrial Parkway-East, Hollister, Missouri ("Hollister East"). Construction activities occurred at Hollister East including clearing, grading, and excavation which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

18. Storm water, snow melt, surface drainage, and runoff water leave Hollister Water Park, Hollister West, and Hollister East (collectively "HIDC Facilities") and flow into an unnamed tributary to Turkey Creek and then into Turkey Creek. The runoff and drainage from Respondent's facilities is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

19. Storm water, snow melt, surface drainage and runoff water leave Hollister East and flow into Kohler Creek. The runoff and drainage from HIDC's Hollister East site is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

21. The HIDC Facilities have "storm water discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(x), and are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Respondent HIDC discharges pollutants into "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

23. Storm water runoff from the HIDC Facilities 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).

24. HIDC's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25. HIDC applied for and was issued NPDES permit coverage under the General Permit described in Paragraph 11, above. MDNR assigned HIDC permit number MO-R109BU1, which was issued on February 6, 2007, for Hollister Water Park; permit number MO-R109CR8, which was issued on June 25, 2008, for Hollister West; and permit number MO-R109CR9, which was issued on June 25, 2008, for Hollister East.

26. On October 29, 2009, EPA performed an inspection of the HIDC Facilities under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate compliance with the CWA.

**C. Birch Street Development, L.L.C.**

27. Respondent Birch Street is a limited liability company and is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

28. At all times relevant to this action, Respondent Birch Street was the owner and/or operator of a construction site known as Birch Street Entertainment, located at the southwest corner of Hollister Parkway and Birch Street, Hollister, Missouri ("Birch Entertainment"). Construction activities occurred at Birch Entertainment including clearing, grading, and excavation which disturbed five (5) acres or more 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.

29. Storm water, snow melt, surface drainage, and runoff water leave Birch Street's facility and flow into an unnamed tributary of Turkey Creek and Turkey Creek. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

31. Birch Street has "storm water discharges 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).

32. Birch Street discharges pollutants into "navigable waters" as defined by CWA Section 502, 33 U.S.C. § 1362.

33. Storm water runoff from Birch Street'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).

34. Birch Street's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

35. Birch Street applied for and was issued NPDES permit coverage under the General Permit described in Paragraph 11, above. MDNR assigned Respondent permit number MO-R109BU0, which was issued on February 6, 2007, for Birch Entertainment.

36. On October 29, 2009, EPA performed an inspection of Birch Entertainment under the authority of Section 308(a) of the CWA, 33 U.S.C. § 318(a). The purpose of the inspection was to evaluate compliance with the CWA.

### **III. Findings of Violation**

#### **A. HIDC, L.L.C.**

##### **1. Hollister Water Park**

##### **i. Inadequate SWPPP**

37. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

38. Section 8. i. of Permit MO-R109BU1 for Hollister Water Park requires that the Stormwater Pollution Prevention Plan (SWPPP) have a description of any anticipated dewatering methods, including the anticipated volume of water to be discharged and the anticipated maximum flow discharged from these dewatering activities, expressed in gallons per minute.

39. Section 10. of Permit MO-R109BU1 for Hollister Water Park requires that the SWPPP explain how the person responsible for erosion control will be notified when storm water runoff occurs.

40. EPA's inspection referenced in Paragraph 26, revealed that the SWPPP for Hollister Water Park did not include a description of the anticipated dewatering methods for the site.

41. EPA's inspection referenced in Paragraph 26, revealed that the SWPPP for Hollister Water Park did not contain an explanation of how the person responsible for erosion control will be notified when storm water runoff occurs.

42. Respondent HIDC's SWPPP inadequacies are a violation of its Permit MO-R109BU1, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**ii. Failure to Install and Implement Best Management Practices (BMP)**

43. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

44. The SWPPP describes use of silt fence/silt sox to be used as a BMP and installed before disturbance occurs on the site. The SWPPP map indicates that approximately 4,200 linear feet of silt fence/silt sox would be installed on the site.

45. The SWPPP for Hollister Water Park states that straw/hay bale dikes will be used for temporary sediment and erosion controls.

46. Land disturbance began on the site on December 20, 2007.

47. Section 8. f. of Permit MO-R109BU1 for Hollister Water Park states that the permittee shall ensure the BMPs are properly installed at the locations and relative times specified in the SWPPP. Peripheral or border BMPs to control runoff from disturbed areas shall be installed or marked for preservation before general site clearing is started.

48. EPA's inspection referenced in Paragraph 26, found that the silt fence/silt sox and the straw/hay bale dikes had not been installed in accordance with the SWPPP.

49. Respondent HIDC's failure to install and implement BMPs is a violation of its Permit MO-R109BU1, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**iii. Failure to Maintain and Describe Best Management Practices**

50. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

51. The Hollister Water Park site is 56.3 acres and the SWPPP states that 56.3 acres are estimated to be disturbed by construction activities.

52. Section 8.g. of Permit MO-R109BU1 for Hollister Water Park states that the SWPPP shall require a sedimentation basin for each drainage area with 10 or more acres disturbed at one time. The sedimentation basin shall be sized to contain a volume of at least 3,600 cubic feet per each disturbed acre draining thereto. Accumulated sediment shall be removed from the basin as needed to ensure the minimum volume of 3,600 cubic feet is maintained. Discharges from the basin shall not cause scouring of the banks or bottom of the receiving stream. The SWPPP shall require the basin be maintained until final stabilization of the disturbed area by the basin.

53. EPA's inspection referenced in Paragraph 26, found that there was not an adequate sedimentation basin serving Hollister Water Park. There was a detention basin onsite that was discharging sediment at the time of the inspection.

54. During the inspection referenced in Paragraph 26, the inspector observed several rock check dams on the site.

55. Section 8.c. of Permit MO-R109BU1 for Hollister Water Park requires that the permittee select appropriate structural BMPs for use at the site and list them in the SWPPP. Section 8. d. of Permit MO-R109BU1 states that the SWPPP shall include a description of both structural and non-structural BMPs that will be used at the site. Section 8. h. of Permit MO-R109BU1 states that the SWPPP shall address other BMPs, as required by site activities, to prevent contamination of stormwater runoff. Section 9. of Permit MO-R109BU1 requires the permittee to update the SWPPP when design, operation, or maintenance of BMPs is changed.

56. Section 11., of Permit MO-R109BU1 for Hollister Water Park requires the permittee to maintain all pollution control measures and systems in good order to achieve compliance with the permit.

57. EPA's inspection referenced in Paragraph 26, found that the SWPPP did not properly describe and was not updated to include the additional rock check dams as BMPs. Further, the rock check dams were not properly functioning BMPs because the size of the rock was too uniformly large and the rock check dams as a whole, were undersized, causing sediment to flow offsite.

58. Respondent HIDC's failure to maintain and describe BMPs is a violation of its Permit MO-R109BU1, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **iv. Failure to Properly Document Inspections**

59. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

60. Section 10. of Permit MO-R109BU1 for Hollister Water Park requires that the permittee conduct regularly scheduled inspections at least once per seven calendar days. All installed BMPs shall be inspected, all outfalls shall be inspected and the receiving streams shall be inspected. Any structural or maintenance problems shall be noted in an inspection report and corrected within seven calendar days of the inspection.

61. The inspection referenced in Paragraph 26, showed that site inspections were performed in accordance with the schedule set forth in the permit. However, the site inspections did not indicate for which site they were performed, or to which specific sites any deficiencies noted correspond. Further, it cannot be determined from the narrative whether any deficiencies were repaired within the seven day timeframe prescribed by the permit.

62. Respondent HIDC's failure to properly document site inspections is a violation of its Permit MO-R109BU1, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**v. Failure to Comply with Narrative Water Quality Standards**

63. The facts stated in Paragraphs 1 through 18 and 20-26 above are herein incorporated.

64. Section 1. of the Requirements section of Permit MO-R109BU1 for Hollister Water Park states that discharges shall not cause violations of the Water Quality Standards (10 C.S.R. 20-7.031(3)), which states, in part, that no water contaminant, by itself or in contribution with other substances, shall prevent waters of the state from meeting, *inter alia*, the following condition: waters shall be free from substances in sufficient amounts to cause: the formation of...unsightly or harmful bottom deposits...or unsightly color or turbidity.

65. The inspection referenced in Paragraph 26, revealed increased turbidity in the unnamed tributary to Turkey Creek and debris from the detention basin was observed in the receiving waters including the unnamed tributary to Turkey Creek, which was caused by discharges of storm water from Hollister Water Park.

66. Respondent HIDC's failure to comply with narrative water quality standards is a violation of its Permit MO-R109BU1, and as such, is a violation of Sections 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**2. Hollister West**

**i. Inadequate SWPPP**

67. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

68. Section 8. i. of Permit MO-R109CR8 for Hollister West requires that the SWPPP have a description of any anticipated dewatering methods, including the anticipated volume of water to be discharged and the anticipated maximum flow discharged from these dewatering activities, expressed in gallons per minute.

69. The inspection referenced in Paragraph 26, revealed that the SWPPP for Hollister West did not include a description of the anticipated dewatering methods for the site.

70. Section 10. of Permit MO-R109CR8 for Hollister West requires that the SWPPP explain how the person responsible for erosion control will be notified when storm water runoff occurs.

71. The inspection referenced in Paragraph 26, revealed that the SWPPP for Hollister West did not contain an explanation of how the person responsible for erosion control will be notified when storm water runoff occurs.

72. Section 8.d.vii. of Permit MO-R109CR8 for Hollister West states that the SWPPP shall provide when the BMP will be installed in relation to each phase of the land disturbance



procedures to complete the project.

73. The inspection referenced in Paragraph 26, found that the SWPPP did not describe the sequence for implementation of each BMP.

74. Section 8. e. of Permit MO-R109CR8 for Hollister West states that where soil disturbing activities cease in an area for 14 days or more, the permittee shall construct BMPs to establish interim stabilization. Interim stabilization shall consist of well-established and maintained BMPs that are reasonably certain to protect waters of the state from sediment pollution over an extended period of time. Section 8. d. of Permit MO-109CR8 for Hollister West states that the SWPPP shall include a description of both structural and non-structural BMPs that will be used at the site.

75. The inspection referenced in Paragraph 26, found that the SWPPP does not describe interim stabilization practices.

76. Section 8. j. of Permit MO-R109CR8 for Hollister West states that, where applicable, upon installation of or connection to roadways, all efforts shall be made to prevent the deposition of earth and sediment onto roadways through the use of proper BMPs.

77. The inspection referenced in Paragraph 26, found that the SWPPP does not provide for BMPs for the roadways.

78. Sections 8.b. and 8.c. of Permit MO-R109CR8 for Hollister West require that the permittee select permanent non-structural and structural BMPs for use at the site and list them in the SWPPP. Section 8.d.vii. of Permit MO-R109CR8 requires that the SWPPP shall provide when the BMP will be installed in relation to each phase of the land disturbance procedures to complete the project.

79. The inspection referenced in Paragraph 26 found that the SWPPP does not describe permanent stabilization practices for the site. The SWPPP also does not describe a schedule to implement the permanent stabilization practices. Further, the SWPPP does not describe the post-construction measures to be taken to reduce stormwater runoff at the site.

80. Section 2. of Permit MO-R109CR8 for Hollister West authorizes non-stormwater discharges from certain activities provided that the discharges are addressed in the SWPPP, including de-watering activities and site watering to establish vegetation.

81. The inspection referenced in Paragraph 26, found that the SWPPP does not identify allowable sources of non-stormwater discharges.

82. Section 8.h. of Permit MO-R109CR8 for Hollister West, requires the SWPPP to address BMPs to address the storage of construction materials.

83. The inspection referenced in Paragraph 26, found that the SWPPP did not address BMPs related to the storage of construction materials.

84. Respondent HIDC's SWPPP inadequacies are a violation of its Permit MO-R109CR8, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**ii. Failure to Install and Implement Best Management Practices**

85. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

86. The SWPPP for Hollister West describes the use of rock check dams at various locations indicated by a map included with the SWPPP.

87. The SWPPP describes use of silt fence/silt sox to be used as a BMP and installed before disturbance occurs on the site. The SWPPP map indicates that approximately 2,600 linear feet of silt fence/silt sox would be installed on the site.

88. Land disturbance began on the site on June 26, 2008.

89. Section 8. f. of Permit MO-R109CR8 for Hollister West states that the permittee shall ensure the BMPs are properly installed at the locations and relative times specified in the SWPPP. Peripheral or border BMPs to control runoff from disturbed areas shall be installed or marked for preservation before general site clearing is started.

90. EPA's inspection referenced in Paragraph 26, found that the silt fence/silt sox and the rock check dams had not been installed before land disturbance began in accordance with the SWPPP.

91. Respondent HIDC's failure to install and implement BMPs is a violation of its Permit MO-R109CR8, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**iii. Failure to Properly Document Inspections**

92. The facts stated in paragraphs 1 through 18 and 20-26 above are herein incorporated.

93. Section 10. of Permit MO-R109CR8 for Hollister West requires that the permittee conduct regularly scheduled inspections at least once per seven calendar days. All installed BMPs shall be inspected, all outfalls shall be inspected, and the receiving streams shall be inspected. Any structural or maintenance problems shall be noted in an inspection report and corrected within seven calendar days of the inspection.

94. The inspection referenced in Paragraph 26, showed that site inspections were performed in accordance with the schedule set forth in the permit. However, the site inspections do not indicate for which site they were performed, or to which specific sites any deficiencies

noted correspond. Further, it cannot be determined from the narrative whether any deficiencies were repaired within the seven day timeframe prescribed by the permit.

95. Respondent HIDC's failure to properly document site inspections is a violation of its Permit MO-R109CR8, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **3. Hollister East**

#### **i. Inadequate SWPPP**

96. The facts stated in paragraphs 1 through 26 above are herein incorporated.

97. Section 8. i. of Permit MO-R109CR9 for Hollister East requires that the SWPPP have a description of any anticipated dewatering methods, including the anticipated volume of water to be discharged and the anticipated maximum flow discharged from these dewatering activities, expressed in gallons per minute.

98. EPA's inspection referenced in Paragraph 26, revealed that the SWPPP for Hollister East did not include a description of the anticipated dewatering methods for the site.

99. Section 10. of Permit MO-R109CR9 for Hollister East requires that the SWPPP explain how the person responsible for erosion control will be notified when storm water runoff occurs.

100. EPA's inspection referenced in Paragraph 26, revealed that the SWPPP for Hollister East did not contain an explanation of how the person responsible for erosion control will be notified when storm water runoff occurs.

101. Section 8.d.vii. of Permit MO-R109CR9 for Hollister East states that the SWPPP shall provide when the BMP will be installed in relation to each phase of the land disturbance procedures to complete the project.

102. EPA's inspection referenced in Paragraph 26, found that the SWPPP did not describe the sequence for implementation of each BMP.

103. Section 8. e. of Permit MO-R109CR9 for Hollister East states that where soil disturbing activities cease in an area for 14 days or more, the permittee shall construct BMPs to establish interim stabilization. Interim stabilization shall consist of well established and maintained BMPs that are reasonably certain to protect waters of the state from sediment pollution over an extended period of time. Section 8. d. of Permit MO-109CR9 for Hollister East states that the SWPPP shall include a description of both structural and non-structural BMPs that will be used at the site.

104. EPA's inspection referenced in Paragraph 26, found that the SWPPP does not describe interim stabilization practices.

105. Section 8. j. of Permit MO-R109CR9 for Hollister East states that, where applicable, upon installation of or connection to roadways, all efforts shall be made to prevent the deposition of earth and sediment onto roadways through the use of proper BMPs.

106. EPA's inspection referenced in Paragraph 26, found that the SWPPP does not provide for BMPs for the roadways.

107. Sections 8.b. and 8.c. of Permit MO-R109CR9 for Hollister East require that the permittee select permanent non-structural and structural BMPs for use at the site and list them in the SWPPP. Section 8.d.vii. of Permit MO-R109CR8 requires that the SWPPP shall provide when the BMP will be installed in relation to each phase of the land disturbance procedures to complete the project.

108. EPA's inspection referenced in Paragraph 26, found that the SWPPP does not describe permanent stabilization practices for the site. The SWPPP also does not describe a schedule to implement the permanent stabilization practices. Further, the SWPPP does not describe the post-construction measures to be taken to reduce stormwater runoff at the site.

109. Section 2. of Permit MO-R109CR9 for Hollister East authorizes non-stormwater discharges from certain activities provided that the discharges are addressed in the SWPPP, including de-watering activities and site watering to establish vegetation.

110. EPA's inspection referenced in Paragraph 26, found that the SWPPP does not identify allowable sources of non-stormwater discharges.

111. Section 8.h. of Permit MO-R109CR9 for Hollister East, requires the SWPPP to address BMPs to address the storage of construction materials.

112. The inspection referenced in Paragraph 26, found that the SWPPP did not address BMPs related to the storage of construction materials.

113. Respondent HIDC's SWPPP inadequacies are a violation of its Permit MO-R109CR9, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**ii. Failure to Install and Implement Best Management Practices**

114. The facts stated in paragraphs 1 through 26 above are herein incorporated.

115. The SWPPP describes use of silt fence/silt sox to be used as a BMP and installed before disturbance occurs on the site. The SWPPP map indicates that approximately 2,600 linear feet of silt fence/silt sox would be installed on the site.

116. The SWPPP describes the use of three sedimentation basins to be used as a BMP and installed before disturbance occurred at the site.

117. Land disturbance began on the site on June 26, 2008.

118. Section 8. f. of Permit MO-R109CR9 for Hollister East states that the permittee shall ensure the BMPs are properly installed at the locations and relative times specified in the SWPPP. Peripheral or border BMPs to control runoff from disturbed areas shall be installed or marked for preservation before general site clearing is started.

119. EPA's inspection referenced in Paragraph 26, found that the silt fence/silt sox and the three sedimentation basins had not been installed before land disturbance in accordance with the SWPPP.

120. Respondent HIDC's failure to install and implement BMPs is a violation of its Permit MO-R109CR9, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **iii. Failure to Maintain Best Management Practices**

121. The facts stated in paragraphs 1 through 26 above are herein incorporated.

122. The SWPPP describes the use of rock check dams and shot rock berms at various locations indicated by a map included with the SWPPP.

123. Land disturbance began on the site on June 26, 2008.

124. Section 11., of Permit MO-R109CR9 for Hollister East requires the permittee to maintain all pollution control measures and systems in good order to achieve compliance with the permit.

125. EPA's inspection referenced in Paragraph 26, found that the rock check dams and shot rock berms were not properly functioning BMPs because the size of the rock was too uniformly large and the rock check dams and shot rock berms, as a whole, were undersized, causing sediment to flow offsite.

126. Respondent HIDC's failure to maintain BMPs is a violation of its MO-R109CR9, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **iv. Failure to Properly Document Inspections**

127. The facts stated in paragraphs 1 through 26 above are herein incorporated.

128. Section 10. of Permit MO-R109CR9 for Hollister East requires that the permittee conduct regularly scheduled inspections at least once per seven calendar days. All installed BMPs shall be inspected, all outfalls shall be inspected, and the receiving streams shall be inspected. Any structural or maintenance problems shall be noted in an inspection report and corrected within seven calendar days of the inspection.

129. The inspection referenced in Paragraph 26, showed that site inspections were performed in accordance with the schedule set forth in the permit. However, the site inspections do not indicate for which site they were performed, or to which specific sites any deficiencies noted correspond. Further, it cannot be determined from the narrative whether any deficiencies were repaired within the seven day timeframe prescribed by the permit.

130. Respondent HIRC's failure to properly document site inspections is a violation of its Permit MO-R109CR9, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**v. Failure to Comply with Narrative Water Quality Standards**

131. The facts stated in Paragraphs 1 through 26 above are herein incorporated.

132. Section 1. of the Requirements section of Permit MO-R109CR9 for Hollister East states that discharges shall not cause violations of the Water Quality Standards (10 C.S.R. 20-7.031(3)), which states, in part, that no water contaminant, by itself or in contribution with other substances, shall prevent waters of the state from meeting, *inter alia*, the following condition: waters shall be free from substances in sufficient amounts to cause: the formation of...unsightly or harmful bottom deposits...or unsightly color or turbidity.

133. The inspection referenced in Paragraph 26, revealed increased turbidity in the Kohler Creek and the unnamed tributary to Turkey Creek and Kohler Creek; and debris from the site was observed in the receiving waters including the Kohler Creek and the unnamed tributary to Turkey Creek, which was caused by discharges of storm water from Hollister East.

134. Respondent HIRC's failure to comply with narrative water quality standards is a violation of its Permit MO-R109CR9, and as such, is a violation of Sections 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**B. Birch Street Development, L.L.C.**

**1. Birch Entertainment**

**i. Inadequate SWPPP**

135. The facts stated in paragraphs 1 through 13 and 27-36 above are herein incorporated.

136. Section 8. i. of Permit MO-R109BU0 for Birch Entertainment requires that the SWPPP have a description of any anticipated dewatering methods, including the anticipated volume of water to be discharged and the anticipated maximum flow discharged from these dewatering activities, expressed in gallons per minute.

137. EPA's inspection referenced in Paragraph 36, revealed that the SWPPP for Birch

Entertainment did not include a description of the anticipated dewatering methods for the site.

138. Section 10. of Permit MO-R109BU0 for Birch Entertainment requires that the SWPPP explain how the person responsible for erosion control will be notified when storm water runoff occurs.

139. EPA's inspection referenced in Paragraph 36, revealed that the SWPPP for Birch Entertainment did not contain an explanation of how the person responsible for erosion control will be notified when storm water runoff occurs.

140. The Respondent Birch Street's SWPPP inadequacies are a violation of its Permit MO-R109BU0, and as such, is a violation of Sections 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**ii. Failure to Install and Implement Best Management Practices**

141. The facts stated in paragraphs 1 through 13 and 27-36 above are herein incorporated.

142. The Birch Entertainment site is 20 acres and the SWPPP states that 20 acres are estimated to be disturbed by construction activities. Land disturbance began on the site in January 2008.

143. The SWPPP describes use of silt fence/silt sox to be used as a BMP and installed before disturbance occurs on the site. The SWPPP map indicates that approximately 1,680 linear feet of silt fence/silt sox would be installed on the site.

144. The SWPPP for Birch Entertainment states that straw/hay bale dikes will be used for temporary sediment and erosion controls.

145. Section 8. f. of Permit MO-R109BU0 for Birch Entertainment states that the permittee shall ensure the BMPs are properly installed at the locations and relative times specified in the SWPPP. Peripheral or border BMPs to control runoff from disturbed areas shall be installed or marked for preservation before general site clearing is started.

146. EPA's inspection referenced in Paragraph 36, found that the silt fence/silt sox and the straw/hay bale dikes had not been installed before land disturbance in accordance with the SWPPP.

147. Respondent Birch Street's failure to install and implement BMPs is a violation of its Permit MO-R109BU0 and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### iii. Failure to Maintain Best Management Practices

148. The facts stated in paragraphs 1 through 13 and 27-36 above are herein incorporated.

149. The Birch Entertainment site is 20 acres and the SWPPP states that 20 acres are estimated to be disturbed by construction activities.

150. Section 8.g. of Permit MO-R109BU0 for Birch Entertainment states that the SWPPP shall require a sedimentation basin for each drainage area with 10 or more acres disturbed at one time. The sedimentation basin shall be sized to contain a volume of at least 3,600 cubic feet per each disturbed acre draining thereto. Accumulated sediment shall be removed from the basin as needed to ensure the minimum volume of 3600 cubic feet is maintained. Discharges from the basin shall not cause scouring of the banks or bottom of the receiving stream. The SWPPP shall require the basin be maintained until final stabilization of the disturbed area by the basin.

151. EPA's inspection referenced in Paragraph 36, found that there was not an adequate sedimentation basin serving this site. The inspector observed a settling pond that had no outlet and no stabilized spillway. If the settling pond was intended to be a sedimentation basin, it was not functioning properly.

152. Respondent Birch Street's failure to maintain BMPs is a violation of its Permit MO-R109BU0, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### iv. Failure to Properly Document Inspections

153. The facts stated in paragraphs 1 through 13 and 27-36 above are herein incorporated.

154. Section 10. of Permit MO-R109BU0 for Birch Entertainment requires that the permittee conduct regularly scheduled inspections at least once per seven calendar days. All installed BMPs shall be inspected, all outfalls shall be inspected, and the receiving streams shall be inspected. Any structural or maintenance problems shall be noted in an inspection report and corrected within seven calendar days of the inspection.

155. The inspection referenced in Paragraph 36, showed that site inspections were performed in accordance with the schedule set forth in the permit. However, the site inspections do not indicate for which site they were performed, or to which specific sites any deficiencies noted correspond. Further, it cannot be determined from the narrative whether any deficiencies were repaired within the seven day timeframe prescribed by the permit.

156. Respondent Birch Street's failure to properly document site inspections is a violation of its Permit MO-R109BU0, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).



## ORDER FOR COMPLIANCE

157. Based on the Factual Background 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 158 and 159.

158. Within thirty (30) days of the Effective Date, as defined in Paragraph 167 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 their Permits. A report describing the steps taken to achieve compliance with the permits shall be submitted in accordance with Paragraphs 161 and 162 below by the thirtieth (30<sup>th</sup>) day following the effective date of the Order.

159. Within 45 days of the Effective Date as defined in Paragraph 167, herein, Respondents shall thoroughly revise the SWPPPs for each permit. A copy of the revised SWPPPs shall be submitted in accordance with Paragraphs 161 and 162, below.

### Certification

160. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondents signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

*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 violations.*

### Submissions

161. 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.

162. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.

### General Provisions

#### **Effect of Compliance with the Terms of this Order for Compliance**

163. 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.

164. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), 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**

165. 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 Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

166. 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**

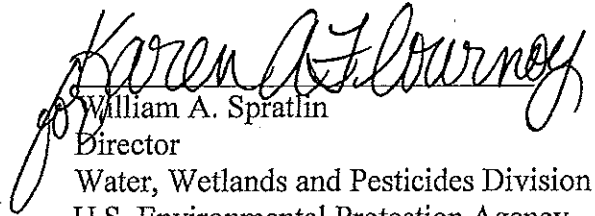
167. The terms of this Order shall be effective and enforceable against Respondents upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

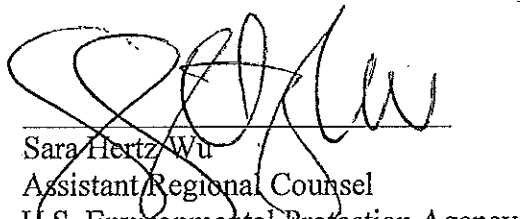
#### **Termination**

168. 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 31st day of August, 2010.

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

  
Sara Hertz Wu  
Assistant 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 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:

Mr. Justin Gage  
HIDC, L.L.C.  
Birch Street Development, L.L.C.  
8B Downing Street  
Hollister, Missouri 65672

and:

Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.

9/1/10

Date

*C. Juana A. Moreno*  
Sender