

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 )

Hamptons on the Lake, L.L.C., )

Respondent )

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

) Docket No. CWA-07-2011-0010

) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE

**AUTHORITY**

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, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division (“WWPD”).

Statutory and Regulatory Framework

1. 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.

2. 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.

3. 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, 33 U.S.C. § 1342(p), 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.

4. 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.

5. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

6. The regulations at 40 CFR §122.26(b)(14)(x) establish requirements for stormwater discharges associated with industrial activity from construction sites which include clearing, grading, and excavation activities equal to or greater than five acres of total land area or include the disturbance of less than five acres that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

7. 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, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **FINDINGS**

8. The Hamptons Condominium development site (“Site”) is located at 1184 Jeffries Road in Osage Beach, Missouri and includes approximately eight acres of residential housing development adjacent to the Lake of the Ozarks.

9. On May 11 and 12, 2010, 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 Site owner’s compliance with the CWA. At the time of the inspection, the owner of the Site was Great Southern Bank. The EPA inspection documented that construction activity occurred at the Site, that proper stormwater best management practices (“BMPs”) had not been implemented and that discharges of sediment from the Site were entering the Lake of the Ozarks.

10. In June 2010, Hamptons on the Lake, L.L.C. (“Respondent”) purchased the Hamptons Condominium development from Great Southern Bank.

11. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

12. Respondent has conducted, among other things, clearing, grading, and excavation activities at the Site.

13. The NPDES permit application regulations for stormwater discharges at 40 CFR §122.26(b)(14)(x) and relevant sections of the Missouri Code of State Regulations are applicable to this Site since clearing, grading, and excavation activities are equal to or greater than five acres of total land area or include the disturbance of less than five acres that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

14. Stormwater, snow melt, surface drainage and runoff water leaves Respondent's Site and discharges into the Lake of the Ozarks, a water of the United States, pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).

15. To date, Respondent has not applied for a NPDES permit.

16. Respondent's discharges into a water of the United States without a NPDES permit are violations of §301 of the CWA.

#### **ORDERED PROVISIONS**

In consideration of the above FINDINGS, and pursuant to the provisions of Section 309(a) of the CWA, 33 U.S.C. §1319(a), Respondent is hereby ORDERED as follows:

17. Within thirty days after receipt of this Order, Respondent shall apply to MDNR for a NPDES permit.

18. Respondent shall submit to EPA its Notice of Intent to apply for a NPDES permit and the Permit Authorization Notice from MDNR once submitted.

19. The submission of documents by Respondent shall include the following written statement, followed by signature of a duly authorized representative of Respondent:

I certify under penalty of law that 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.

20. All documents to be submitted to EPA under 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.

21. In the event Respondent fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order against Respondent and/or seek additional penalties against Respondent for such noncompliance with the terms of the Order.

### General Provisions

#### **Effect of Compliance with the terms of this Order**

22. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

23. 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 Section 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**

24. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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**

25. 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.

#### **Parties Bound**

26. This Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

**Effective Date**

27. 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**

28. 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.

  
WILLIAM A. SPRATLIN  
Director  
Water, Wetlands and Pesticides Division

12-9-10  
DATE

  
CHRIS MUEHLBERGER  
Assistant Regional Counsel  
Office of Regional Counsel

12.13.10  
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Mr. Jason Becker  
Hamptons on the Lake, L.L.C.  
1108 Jung Station Road, Suite 1375  
St. Peters, Missouri 63376

*Ced Muehlhage*                      12.13.10  
Date

IN THE MATTER OF Hamptons on the Lake, L.L.C., Respondent  
Docket No. CWA-07-2011-0010

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation, Order For Compliance was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris Muehlberger  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jason Becker  
Hamptons on the Lake, L.L.C.  
1108 Jung Station Road, Suite 1375  
St. Peters, Missouri 63376

Dated: 12/19/10



Kathy Robinson  
Hearing Clerk, Region 7