

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)

) Docket No. CWA-07-2006-0236

Raymond Poon)

a.k.a. Hau Hing Poon)

3311 North University Street)

Peoria, IL 61604)

Respondent)

) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE

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

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to 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 VII and further delegated to the Director of Region VII’s Water, Wetlands and Pesticides Division.

2. Respondent is Raymond Poon a.k.a. Hua Hing Poon (hereinafter “Respondent”) an individual and owner and/or operator of a commercial restaurant development known as the Dynasty Buffet located at Elmore Circle & Elmore Ave. in Davenport, Iowa.

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 the National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. The CWA prohibits 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 storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform to 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 storm water discharges at 402 C.F.R. § 122.26.

7. 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.

8. 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 area which are not part of a larger common plan of development or sale.

9. 40 C.F.R. § 122.26(b)(15) defines “storm water discharge associated with small construction activity”, in part, as construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale.

10. The Iowa Department of Natural Resources (IDNR) is the 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 delegated states for violations of the CWA.

11. The IDNR has issued a NPDES General Permit No. 2 for the discharge of storm water associated with construction activities (the General Permit). IDNR assigned Respondent discharge an Authorization No. 9914-9713 (Permit). The Permit became effective on August 9, 2005 and expires on August 9, 2006. The Permit authorizes the discharge of storm water associated with industrial activity from construction sites.

Factual Background

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

13. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Dynasty Buffet located at Elmore Circle and Elmore Ave. in Davenport, Iowa. Construction activities occurred at the Site including clearing, grading, and excavation which disturbed 1.28 acres of land.

14. Storm water, snow melt, surface drainage, and runoff water leaves Respondent's facility and discharges into Pheasant Creek a tributary of Duck Creek and the Mississippi River. The runoff and drainage from Respondent's construction site is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

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

17. The Site was a "point source" which caused the "discharge of pollutants" as defined by CWA Section 502, 33 U.S.C. § 1362.

18. Respondent discharged pollutants from the Dynasty Buffet Site into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. On April 20, 2006, EPA 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 treatment and disposal of storm water at the site in accordance with the CWA.

Findings of Violation

Count 1 – Failure to Install Appropriate Best Management Practices

20. The facts stated in paragraphs 12 through 19 above are herein incorporated.

21. Part IV of the Respondent's permit requires facilities to implement provisions of the storm water pollution prevention plan required under Part IV as a condition of the permit.

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

23. The EPA inspection referenced in paragraph 19 above, revealed no evidence of any attempts to stabilize the site either with seed or mulch including a steep slope on the north side of the parking lot area.

24. Part IV(D)(2)(A)(2) of the Respondent's permit requires a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff from

exposed areas of the site. Such practices may include silt fences, sediment traps, check dams, and storm drain inlet protection.

25. The EPA inspection referenced in paragraph 19 above, revealed that a silt-fence ditch check featured in the Respondent's Storm Water Pollution Prevention Plan (SWPPP) was not installed properly.

26. Respondent's failure to properly install pollution control measures is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 2 – Failure to Maintain Best Management Practices

27. The facts stated in paragraphs 12 through 19 above are herein incorporated.

28. Part IV of the Respondent's permit requires facilities to implement provisions of the storm water pollution prevention plan required under Part IV as a condition of the permit.

29. Part IV (D)(3) of Respondent's permit requires a description of procedures to maintain in good and effective operating conditions vegetation, erosion, and sediment control measures and other protective measures identified in the site plan.

30. Part IV(D)2(B)(2) of the Respondent's permit requires velocity dissipation devices at discharge locations and along the length of any a outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course.

31. The EPA inspection referenced in paragraph 19 above, revealed that sediment traps, one to be located immediately below the slope of the north end of the parking lot and another located at the northwest corner of the parking lot had been removed.

32. The EPA inspection referenced in paragraph 19 above, revealed five straw bale ditch checks in the road ditch along Elmore Avenue, and a straw bale barrier around the contour of the slope north of the parking lot were not properly trenched and in a severe stage of deterioration.

33. The EPA inspection referenced in paragraph 19 above, revealed that the perimeter silt fence along the eastern edge of the site on the slope east of the parking lot were in severe disrepair, falling down, or not properly anchored. Additionally, a double line of silt fences bordering the property line were completely inundated with silt.

34. Respondent's failure to maintain the pollution control measures is a violation of Respondent's Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Order For Compliance

35. 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 36 through 39.

36. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the permit.

37. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to prevent recurrence of these or similar violations.

38. In the event that Respondent believes complete correction of the violations herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

39. All documents required to be submitted to EPA by this order shall be submitted by mail to:

Nicholas Peak
Water, Wetlands and Pesticides Division / Water Enforcement Branch
U.S. Environmental Protection Agency – Region 7
901 North Fifth Street
Kansas City, KS 66101.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

40. 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.

41. 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 Sections 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 Act for any violation whatsoever.

Access and Requests for Information

42. 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

43. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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.

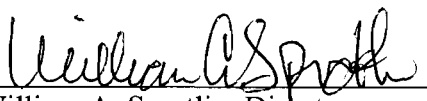
Effective Date

44. 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.

Termination

45. 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 5th day of September, 2006.


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

Kristina Kemp

Kristina Kemp
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
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:

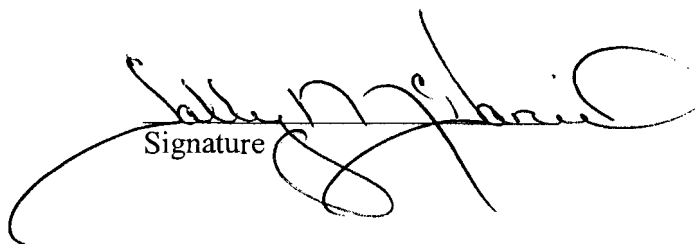
Raymond Poon
3311 N. University St.
Peoria, IL 61604

Dennis Ostwinkle
Iowa Department of Natural Resources – Field Office #6
1023 W. Madison Street
Washington, IA 52353

Mr. Joe Griffin
Stormwater NPDES Program Coordinator
Iowa Department of Natural Resources
Wallace Building – 502 E. 9th Street
Des Moines, Iowa 50319

Ed Tormey
Bureau Chief, Legal Services
Iowa Department of Natural Resources
Wallace Building – 502 E. 9th Street
Des Moines, IA 50319.

9/16/06
Date


Signature