

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 )  
)  
)  
Honey Creek Farms, L.L.C. )  
)  
)  
Respondent )  
)  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

Docket No. CWA-07-2006-0080

FINDINGS OF VIOLATION,  
ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region VII and further delegated to the Director of Region VII’s Water, Wetlands, and Pesticides Division.

2. Respondent is Honey Creek Farms, L.L.C., a company incorporated under the laws of Kansas and authorized to conduct business in the State of Kansas.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of 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 with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of 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 land area which are not part of a larger common plan of development or sale.

9. The Kansas Department of Health and Environment (KDHE) is the state agency with the authority to administer the federal NPDES program in Kansas 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.

10. The KDHE issued a General Permit for the discharge of storm water under the NPDES, Permit No. S-MCST-0110-1 (the Permit). The permit became effective on March 1, 2003, and expires on December 31, 2006. The permit governs storm water discharges associated with:

Large construction activity consisting of any activity (e.g. clearing, grubbing, excavating, grading, etc.) that disturbs a cumulative total of five (5.0) or more acres or that is part of a larger common plan of development or sale which will disturb a cumulative total of five or more acres.

#### Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Honey Creek Farms development site located at 166<sup>th</sup> Street and U.S. 24/40, Basehor, Leavenworth County, Kansas (the Site). Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total

land area or which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

13. Storm water, snow melt, surface drainage and runoff water leave Respondent's facility and go into a tributary of Hog Creek. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

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

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

17. Respondent discharged pollutants into a tributary of Hog Creek. Hog Creek is a "navigable water" as defined by CWA Section 502, 33 U.S.C. § 1362.

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

19. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 10 above. KDHE assigned Respondent Permit No. KS-R101315, which was issued on December 12, 2003.

20. On May 9, 2005, contractors for 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

##### Failure to Maintain Pollution Control Measures - Count 1

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Part X of the Standard Conditions section of Respondent's permit requires Respondent to effectively operate and maintain all pollution control measures and systems in good order to achieve compliance with the terms of the General Permit.

23. The inspection referenced in paragraph 20 above, revealed that Respondent's pollution control measures, which included silt fences, storm drains, and stabilization practices, were not properly maintained.

24. Respondent's failure to properly maintain its pollution control measures is a violation of Part X of the Standard Conditions section of Respondent's General 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).

**Failure to Properly Design, Install and Maintain a Sedimentation Basin - Count 2**

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

26. Part VII of the Stormwater Pollution Prevention Plan Requirements and Guidelines section of Respondent's permit states that a Stormwater Pollution Prevention Plan shall require a sedimentation basin properly designed and maintained to provide at least 3,600 cubic feet of storage per acreage drained or evaluate similarly effective BMPs.

27. The inspection referenced in paragraph 20 above, revealed that Respondent did not properly install an appropriate sedimentation basin for storm water to pass through prior to leaving the construction site and to prevent sediment from migrating offsite.

28. Respondent's failure to properly install an appropriate sedimentation basin is a violation of Part VII of the Stormwater Pollution Prevention Plan Requirements and Guidelines section of Respondent's General 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).

**Failure to Perform and Document Site Inspections -Count 3**

29. The facts stated in paragraphs 11 through 28 above are herein incorporated.

30. Part VII of the Stormwater Pollution Prevention Plan Requirements and Guidelines section of Respondent's permit requires that regular inspections be performed on regular schedule and within twenty-four hours of the end of a storm which results in precipitation of 0.5 inches or greater and at a minimum of once per month for disturbed areas that have not been stabilized.

31. The inspection referenced in paragraph 20 above, revealed that Respondent did not perform site inspections at a minimum of once per month, or on a regular schedule, or within twenty-four hours of the end of a storm which results in precipitation of 0.5 inches or greater.

32. Respondent's failure to perform and document site inspections is a violation of Part VII of the Stormwater Pollution Prevention Plan Requirements and Guidelines section of Respondent's General 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

33. 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 34 through 36.

34. 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.

35. 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 be sufficient to prevent recurrence of these or similar violations.

36. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the 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**

37. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Raju Kakarlapudi  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101.

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

Joe Mester  
Kansas Department of Health and Environment  
1000 SW Jackson  
Topeka, Kansas 66612.

#### General Provisions

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

39. 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.

40. 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**

41. 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**

42. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

#### **Effective Date**

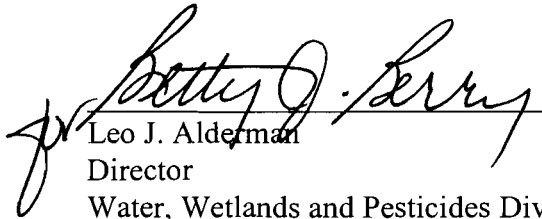
43. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

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Honey Creek Farms, L.L.C.  
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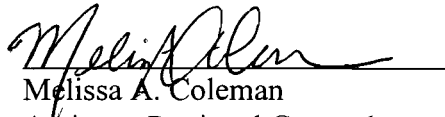
### **Termination**

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.

Issued this 15<sup>th</sup> day of December, 2005.



Leo J. Alderman  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101



Melissa A. Coleman  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

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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:

Mr. Roger A. Morningstar, Registered Agent  
Honey Creek Farms L.L.C.  
1109 Oaktree Drive  
Lawrence, Kansas 66049.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class mail to:

Joe Mester  
Kansas Department of Health and Environment  
1000 SW Jackson  
Topeka, Kansas 66612.

12/22/05  
Date

