

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-07-2007-0070
)
The Links at Columbia,)
A Limited Partnership)
1165 Joyce Boulevard)
Fayetteville, Arkansas 72703)
)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
)
Respondent)
)
)
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 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 The Links at Columbia, A Limited Partnership, a company registered under the laws of Arkansas and authorized to conduct business in the State of Missouri.

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 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 delegated states for violations of the CWA.

10. The MDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R100NXX. This General Permit became effective on April 26, 2002, and expires on April 25, 2007. The General Permit governs stormwater 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) that are performed in a city, county, or other governmental jurisdiction that has a storm water control program for land disturbance activities.

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 The Links at Columbia (“Site”) located on Clark Lane in Columbia, Missouri. 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 from Respondent's facility goes into Hominy Branch and unnamed tributaries of Hominy Branch. Hominy Branch empties into Hinkson 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. The Site 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).

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

17. Storm water runoff from Respondent'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).

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. MDNR assigned Respondent permit number MO-R100N68, which was issued on January 20, 2006.

20. On May 9, 2007, EPA inspectors 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 Properly Implement and Maintain Best Management Practices (BMPs)

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

22. Part 12 of the Requirements and Guidelines section of Respondent's permit requires that the 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.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained silt fencing. Specifically, silt fences were not properly installed, and numerous silt fences were undermined, overrun, or filled with sediment.

24. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained storm drain inlet protection mechanisms for an area inlet on the northern tract of the Site.

25. Part 3 of the Requirements and Guidelines section of Respondent's permit states that good housekeeping practices shall be maintained on the site to keep solid waste from entry into the waters of the state. The EPA guidance document, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices" further defines good housekeeping practices to include the cleanup of sediments that have been tracked by vehicles onto roadways.

26. At the time of the EPA inspection referenced in paragraph 20 above, significant vehicle track-out was observed on Clark Lane.

27. Respondent's failure to properly maintain its pollution control measures and good housekeeping practices is a violation 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).

Count 2

Failure to Comply with Narrative Water Quality Standards

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

29. Part 2 of the Requirements and Guidelines section of Respondent's permit states that discharges shall not cause violations of the general criteria in the Water Quality Standards (10 C.S.R. 20-7.031(3)), which states, in part, that no water contaminant, by itself or in combination with other substances, shall prevent the 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 prevent full maintenance of beneficial uses.

30. The EPA inspection referenced in paragraph 20 above, revealed significant deposition of sediment at the two storm water outfalls on the west bank of Hominy Creek. Sedimentation was also observed in the receiving stream.

31. Respondent's failure to comply with narrative water quality-based effluent limitations or conditions 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), and implementing regulations.

Count 3

Failure to Properly Implement SWPPP

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

33. Part 8 of the Requirements and Guidelines section of Respondent's permit requires that Respondent fully implement the provisions of the Storm Water Pollution Prevention Plan (SWPPP) throughout the term of the land disturbance project.

34. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to properly implement several elements of the SWPPP. Specifically, Respondent failed to properly implement SWPPP provisions pertaining to: phased grading and construction, sequencing of activities including the installation of sedimentation basins, and proper implementation and maintenance of best management practices.

35. Respondent's failure to implement the SWPPP is a violation 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).

Count 4

Failure to Update and Amend SWPPP

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

37. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that the permittee shall update and amend the SWPPP (and fully implement the amended SWPPP, per Part 8 of the permit and Paragraph 16 of the Erosion Control Notes of the SWPPP) as appropriate during the terms of the land disturbance activity. The permittee shall amend the SWPPP at a minimum whenever, *inter alia*, the SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation (e.g. there is visual evidence, such as excessive site erosion or excessive sediment deposits in stream).

38. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not amend, and accordingly, implement the amended SWPPP in response to deficiencies observed on site. Specifically, Respondent did not amend the SWPPP in response to inadequate erosion controls in areas where the existing type or quantity of erosion controls were insufficient to prevent sediment-laden runoff from entering the receiving stream. The inspection noted inadequate or ineffective erosion controls on slopes and near outfalls.

39. Respondent's failure to update and amend the SWPPP is a violation 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).

Count 5

Failure to Perform and Document Site Inspections

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

41. Part 11 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. In addition, it requires that any deficiencies be noted in a report and corrected within seven calendar days of the inspection. The report is to be kept at a site which is readily available from the permitted site until final stabilization is achieved.

42. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week for each week during active land disturbance and did not keep all reports at a site which is readily available from the permitted site.

43. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed within a reasonable time period (not to exceed 72 hours) following heavy rains.

44. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not perform documented inspections in response to every heavy rain event.

45. Respondent's failure to perform and document site inspections is a violation 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

46. 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 47 through 49.

47. Within fourteen (14) 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 including, but not limited to, the following items:

- a) Maintain all silt fencing and other pollution control measures and systems on site in good and working order;
- b) Ensure that storm water discharges from the site do not cause or contribute to a violation of the narrative water quality standards including, but not limited to, causing or contributing to excessive sedimentation resulting in the formation of unsightly or harmful bottom deposits;
- c) Implement all provisions of the SWPPP throughout the term of the land disturbance project, including provisions pertaining to:
 - i) proper implementation and maintenance of best management practices, including:
 - A) properly trench and maintain silt fences;
 - B) maintain functioning pipe slope drains; and
 - C) maintain functioning sedimentation basins and traps on the northern tract of the site throughout land disturbance activity
 - ii) phased grading and construction; and
 - iii) sequence of construction activities;
- d) Amend SWPPP, and fully implement the amended SWPPP, whenever, *inter alia*, the SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation (e.g. there is visual evidence, such as excessive site erosion or excessive sediment deposits in stream). Specifically address adequacy and effectiveness of BMPs on sloped areas and near outfalls;
- e) Perform documented site inspections at a minimum of once per week. All deficiencies identified during such inspection shall be noted in a report containing the minimum information required by the general permit, and corrected within seven calendar days of the inspection; and
- f) Perform documented site inspections within a reasonable time period (not to exceed 72 hours) following heavy rains.

48. 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.

49. In the event that Respondent believes complete correction of the violations cited herein is not possible within fourteen (14) days of the effective date of this Order, the Respondent shall, within those fourteen (14) 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

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

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

51. 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 Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

52. 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.

53. 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 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an

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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

54. 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

55. 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.

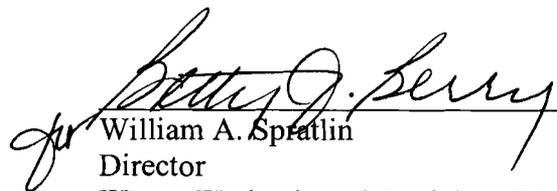
Effective Date

56. 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

57. 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 8th day of August, 2007.



William A. Spratlin

Director

Water, Wetlands and Pesticides Division

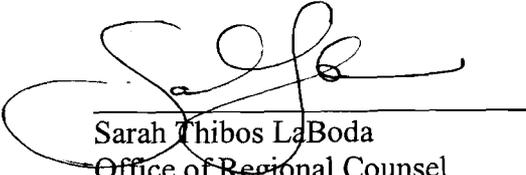
U.S. Environmental Protection Agency

Region VII

901 North Fifth Street

Kansas City, Kansas 66101

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Sarah Thibos LaBoda
Office of 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:

The Corporation Company
Registered Agent for The Links at Columbia
120 South Central Avenue
Clayton, Missouri 63105; and

Mr. Jerry Rogers
Lindsey Construction
1183 Joyce Avenue, Suite 1
P.O. Box 8250
Fayetteville, Arkansas 72703.

Sent via first class mail to:

Mr. Kevin Mohammadi, Chief
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102; and

Irene Crawford, Regional Director
MDNR, Northeast Regional Office
1709 Prospect Dr.
Macon, MO 63552-2602.

8/8/07
Date


Kathy Robinson