

FILED

September 18, 2025

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**U.S. EPA REGION 7
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2024-0143
Randal DeVerger)	
)	
)	
)	
)	
Respondent)	CONSENT AGREEMENT AND
)	FINAL ORDER
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

Preliminary Statement

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) at 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (EPA) and Respondent, Randal DeVerger has agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the conditions and limitations of the National Pollutant Discharge Elimination System (NPDES) Permit for the facility issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301(a) of the CWA, 33 U.S.C. § 1311.

Parties

4. The authority to act under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the "Complainant") with the concurrence of the Regional Counsel.

5. Respondent Randal DeVerger, at all relevant times owned the construction site at 2772 Stonehouse Road in De Soto, Missouri (the “Site”).

Statutory and Regulatory Framework

6. 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, which provides that pollutants may be discharged only in accordance with the terms of an NPDES permit.

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

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” as “the waters of the United States, including the territorial seas.” “Waters of the United States” includes “relatively permanent, standing or continuously flowing bodies of water ‘forming geographic[al] features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes’.” *Sackett v. EPA*, 598 U.S. 651, 671 (2023) (quoting *Rapanos v. United States*, 547 U.S. 715, 739 (2006)).

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth the requirements for the issuance of NPDES permits for the discharge of stormwater. It requires, in part, that a discharge of stormwater associated with industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

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

11. 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.

12. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity” as the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw material storage areas at an industrial plant.

13. Included in the categories of facilities considered to be engaging in “industrial activity” are facilities engaged in construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. *See* 40 C.F.R. § 122.26(b)(14)(x).

14. The Missouri Department of Natural Resources (“MoDNR”) is the state agency

with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

General Allegations

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

16. At all times relevant to this action, Respondent was the owner of an approximately 14-acre construction site located within a 49-acre parcel at 2772 Stonehouse Road in De Soto, Missouri (the “Site”).

17. The Site under construction comprises approximately 14 acres and is intersected by an unnamed tributary (Waterbody ID: MO_5029.00, NHD Reach Code: 07140104001429) to Dry Creek (Waterbody ID: MO_3418.00). Construction at the site began in April 2023. Construction activities include clearing of 14 acres of vegetation and building an earthen dam using heavy machinery.

18. Stormwater, snow melt, surface drainage, and runoff water leave Respondents’ Site via multiple drainageway paths to an unnamed tributary to Dry Creek.

19. The Site contains “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. Stormwater runoff from the Site contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The unnamed relatively permanent tributary to Dry Creek is a second order stream which receives flow from at least two springs and has impounded residential ponds upstream within the 500-acre drainage area. Water was observed in the unnamed tributary during all inspections, including while the area was experiencing drought conditions.

22. Perennial Dry Creek has year-round flow and is classified by MoDNR as a Class P permanently flowing water that connects to Big River and ultimately to the Meramec River a traditionally navigable water. The unnamed tributary, Dry Creek, Big River and Meramec River are all “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. Stormwater runoff from Respondents’ industrial activity at the Site results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

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

25. Between April 2023 and October 2023, Respondent owned and/or operated the Site while engaged in construction activities without a valid NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

26. On October 12, 2023, EPA conducted a compliance evaluation inspection (EPA Inspection) of the Site pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondents' compliance with the CWA. During the Inspection, or shortly thereafter, the EPA inspector reviewed Respondents' records and obtained copies of documents related to the Site. The EPA inspector also toured the Site, observed evidence of discharge, and photographed various stormwater-related areas.

27. EPA emailed to Respondent a copy of the Inspection report on November 30, 2023.

28. Effective October 16, 2023, MoDNR issued General State Operating NPDES Permit Number MORA25287 ("Permit") to Randal DeVerger, for industrial stormwater discharges from the Site. The Permit governs Respondents' stormwater discharges that are associated with industrial activity at the Site, including clearing, grading, and excavation.

29. The Permit authorizes the discharge of stormwater runoff from the Site subject to compliance with the conditions and limitations set forth in the Permit.

30. The Permit requires that the owner and operator develop and implement a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from the construction activities, describe and ensure the implementation of best management practices ("BMPs") that will be used to reduce the pollutants in stormwater discharge associated with construction activities at the construction Site, and to assure compliance with the terms and conditions of the Permit.

31. A SWPPP was developed for the Site on January 31, 2024.

Allegations of Violation

Count 1

Failure to Develop a SWPPP

32. The paragraphs above are herein incorporated by reference.

33. Permit Requirement IV states that the Permittee must develop and implement a SWPPP which incorporates site specific practices to best minimize the soil exposure, soil erosion, and the discharge of pollutants, including solids.

34. Respondent had not developed a SWPPP between permit issuance on October 16, 2023, and SWPPP submittal to MoDNR on January 31, 2024.

35. Respondents' failures to develop a SWPPP is a violation of the requirements of the NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33. U.S.C. § 1242(p).

**Count 2
Failure to Implement BMPs and Inadequate BMPs**

36. The facts stated above are herein incorporated by reference.

37. Permit Requirement III states that the Permittee shall ensure the design, installation and maintenance of effective erosion and sediment controls to minimize the discharge of pollutants.

38. On February 15, 2024, an inspection conducted by Jefferson County MS4, MoDNR, USACE and the Respondent's environmental consultant, revealed several areas where BMPs were missing or inadequate. These issues were not fully resolved until the site was deemed to be back in compliance by March 14, 2024. These include:

- a. Failure to properly install and maintain BMPs for erosion and sediment control throughout the duration of the project; and
- b. Failure to stabilize areas within 14 days of ceasing construction activities.

39. Inspections by the Respondent's environmental consultant on February 1, 2024, February 15, 2024, and February 28, 2024, documented in inspection photographs and reports, further revealed areas where BMPs were missing or inadequate including:

- a. Lack of seeding and straw coverage within the disturbed area;
- b. Inadequate BMPs along the 25-foot buffer zone on each side of the unnamed tributary; and
- c. Straw mulch present in the unnamed tributary to Dry Creek.

Respondents' failure to ensure the design, installation and maintenance of effective erosion and sediment controls to minimize the discharge of pollutants from entering the unnamed tributary are violations of the conditions and limitations of the Permit.

CONSENT AGREEMENT

Jurisdiction and Waiver of Right to Hearing

40. Respondent and EPA agree to the terms of this Consent Agreement and Final Order.
41. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.
42. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Consent Agreement and Final Order.
43. Respondent waives their rights to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement and Final Order.
44. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred because of this action.
45. Respondent consents to receive service of the filed Consent Agreement and Final Order electronically at the following email address: bdeverger@cdxconsultants.com.
46. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
47. Respondent understands and agrees that this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondents' agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.
48. Based upon the facts alleged in this Consent Agreement and Final Order, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is **\$35,300**.

Terms of Payment

49. Respondent agrees to pay a civil penalty in the amount of **Thirty-Five Thousand Three Hundred Dollars (\$35,300)** ("Assessed Penalty") within thirty (30) days after the date

the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

50. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

When making a payment, Respondent shall:

- a. Identify every payment with Respondents' name and the docket number of this Agreement, CWA-07-2024-0143,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Amy Gonzales
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
Via electronic mail to:
Gonzales.amy@epa.gov

Kristina Gonzales
Office of Regional Counsel
U.S. Environmental Protection Agency
Via electronic mail to:
Gonzales.kristina@epa.gov; and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

51. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

a. **Interest.** Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.

b. **Handling Charges.** The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

c. **Late Payment Penalty.** A twenty percent (20%) quarterly non-payment penalty.

d. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

3. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

52. **Allocation of Payments.** Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

53. **Tax Treatment of Penalties.** Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

Effect of Settlement and Reservation of Rights

54. Full payment of the penalty proposed in this Consent Agreement and Final Order shall only resolve Respondents' liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

55. Respondent certifies by signing this Consent Agreement and Final Order that Respondent is currently in compliance with all requirements of the CWA and its implementing regulations, including but not limited to the requirements of 40 C.F.R. Part 122.

56. The effect of settlement described above is conditional upon the accuracy of the Respondents' representations to the EPA, as memorialized in this Consent Agreement and Final Order.

57. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

58. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

59. With respect to matters not addressed in this Consent Agreement and Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

60. The Parties acknowledge that this Consent Agreement and Final Order is subject to public notice and comment required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

61. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

62. The state of Missouri has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

63. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

64. Respondent and Complainant agree that this Consent Agreement and Final Order may be signed electronically in part and counterpart.

65. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

For the Complainant, United States Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7

Kristina Gonzales
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7

For the Respondent, Randal DeVerger:



Signature

7-28-25
Date

Randal DeVerger
Name

Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

I certify a true and correct copy of the Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy emailed to Respondent:

Randal DeVerger
bdeverger@cdxconsultants.com

Copy emailed to MoDNR:

john.hoke@dnr.mo.gov
Mr. John Hoke, Director
Water Protection Program
Division of Environmental Quality

Copy emailed to representatives for Complainant:

Gonzales.kristina@epa.gov
Kristina Gonzales
EPA Region 7 Office of Regional Counsel

Signature