

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)

Norvern, L.L.C.)
112 South Locust)
Winfield, Iowa 52659)

Respondent)

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

) Docket No. CWA-07-2008-0079

) CONSENT AGREEMENT
) FINAL ORDER

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Norvern, L.L.C., (Respondent) have 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) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as 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, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII (Complainant).

4. Respondent is Norvern, L.L.C., a company registered under the laws of Nebraska and authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. The Iowa Department of Natural Resources (IDNR) is the state 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 authorized states for violations of the CWA.

12. The IDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. IA10201-10006. This General Permit became effective on October 1, 2002, and expired on October 1, 2007 and was renewed on October 1, 2007. This 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).

Factual Background

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

14. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Sherwood Country Estates ("Site") located at the intersection of County Roads G36 and L34 in Hazel Dell Township, Iowa. 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.

15. Storm water, snow melt, surface drainage, and runoff water from Respondent's facility goes into an unnamed tributary of Mosquito Creek. Mosquito Creek empties into the Missouri River. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

17. 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).

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

19. 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 Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. 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.

21. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 12, above, for a 50-acre portion of the development, generally described as Phase I. IDNR assigned Respondent permit number IA10201-10006, which was issued on July 27, 2007.

22. On October 11 and 12, 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 compliance with the CWA.

Findings of Violation

Count 1

Failure to Install Appropriate BMPs

23. The facts stated in paragraphs 13 through 22 above are herein incorporated.

24. Section D.2.A(1) of the SWPPP section of Respondent's permit states that the Respondent's SWPPP should contain a description of temporary and permanent stabilization practices to ensure preservation of existing vegetation, including geotextiles and other appropriate measures. Section A(2) of the Erosion and Sediment Controls section of Respondent's permit states that the Respondent's SWPPP should contain a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas, including storm drain inlet protection. Section D.2.B of the SWPPP section of Respondent's permit states that permittees are responsible for the installation of storm water management measures prior to final stabilization of the site.

25. The EPA inspection referenced in paragraph 22 above, revealed that Respondent's site was not stabilized and Respondent had not installed required erosion mats adjacent to paved streets at the Site.

26. The EPA inspection referenced in paragraph 22 above, revealed that Respondent's site was not stabilized and Respondent had not installed curb drain inlet protection for at least 4 of the 10 curb drains at the Site.

27. Respondent's failure to install appropriate impediments to sediment movement 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 Properly Implement BMPs

28. The facts stated in paragraphs 13 through 22 above are herein incorporated.

29. Section D.2.A(1) of the SWPPP section of Respondent's permit states that stabilization measures to preserve existing vegetation should be implemented where attainable. Section D.2.B(2) states that velocity dissipation devices shall be placed at discharge locations to provide a non-erosive velocity flow from the structure to a water course. Section D.2.B(2)(a) states that a sediment basin shall be provided where attainable until final stabilization of the site is achieved. Part IV of Respondent's permit states that facilities must implement the provisions of the SWPPP as a condition of the permit.

30. The EPA inspection referenced in paragraph 22 above, revealed that Respondent's site was not stabilized and Respondent failed to effectively stabilize the Site's existing ground cover to protect vegetation and prevent erosion.

31. The EPA inspection referenced in paragraph 22 above, revealed that Respondent installed, but failed to properly implement, erosion control mat and rock apron velocity dissipation devices, resulting in extensive erosion in and around the Site.

32. The EPA inspection referenced in paragraph 22 above, revealed that Respondent failed to securely attach a velocity dissipation device to accommodate overflow from the Site's southwest sediment basin.

33. Respondent's failure to properly implement BMPs 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 3

Failure to Maintain Best Management Practices (BMPs)

34. The facts stated in paragraphs 13 through 22 above are herein incorporated.

35. Section M of the Standard Permit Conditions section of Respondent's permit requires that the Respondent shall at all times properly operate and maintain all facilities and systems of treatment and control installed or used by the permittee to achieve compliance with the conditions of the General Permit and the Storm Water Pollution Prevention Plan ("SWPPP").

36. The EPA inspection referenced in paragraph 22 above, revealed that Respondent had not adequately maintained silt fencing.

37. The EPA inspection referenced in paragraph 22 above, revealed that Respondent had not adequately maintained sediment basins.

38. The EPA inspection referenced in paragraph 22 above, revealed that Respondent had not adequately maintained a rock check dam.

39. Respondent's failure to properly maintain its pollution control measures 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 Perform and Document Site Inspections

40. The facts stated in paragraphs 13 through 22 above are herein incorporated.

41. Section D.4 of the SWPPP section of Respondent's permit requires that qualified personnel shall inspect disturbed areas of the inspection site at a minimum of once per week and within 24 hours of the end of a rain storm producing 0.5 inches of water or greater. Section D.4(C) requires that observations from these inspections be noted in a report, which should include a description of the major observations of the inspection and actions taken.

42. The EPA inspection referenced in paragraph 22 above, revealed that, between June 2006 and October 2007, Respondent failed to perform 36 weekly documented site inspections out of a 70-week period and failed to perform inspections after 27 significant rainfall events.

43. The EPA inspection referenced in paragraph 22 above, revealed that Respondent failed to adequately describe in site inspection reports the location and extent of deficient or damaged BMPs, as described in Counts 1 through 3.

44. 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).

Count 5

Failure to Develop an Adequate SWPPP

45. The facts stated in paragraphs 13 through 22 above are herein incorporated.

46. Section D.1(D) of the SWPPP section of Respondent's permit requires that Respondent's SWPPP provides a site map indicating the location of structural and nonstructural controls identified in the plan. Section D.2 requires that the SWPPP provides a description of controls that will be implemented at the Site. Section C of the SWPPP section of Respondent's permit requires that the Respondent amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that creates a potential for pollutant discharge that has not been addressed in the SWPPP.

47. The EPA inspection referenced in paragraph 22 above, revealed that Respondent's SWPPP lacked the required location and description information for Respondent's rock check dams, berms, and discharge structures for sediment basins.

48. The EPA inspection referenced in paragraph 22 above, revealed that Respondent failed to amend the SWPPP after Respondent was prohibited by the county to construct a sediment basin in the northeastern section of the Site.

49. Respondent's failure to develop an adequate 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).

CONSENT AGREEMENT

50. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

51. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

52. Respondent neither admits nor denies the factual allegations set forth above.

53. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CA/FO.

54. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

55. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

56. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

57. This CA/FO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

58. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is scheduled to be in compliance with all requirements of Sections 301 and 402 of the CWA, and all regulations promulgated thereunder, pursuant to the terms of EPA's Administrative Compliance Order, docket number CWA-07-2008-0052.

59. The effect of settlement described in paragraph 57 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 58 above, of this CA/FO.

60. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$13,982 as set forth in paragraph 1 of the Final Order.

61. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Thirteen Thousand Nine Hundred and Eighty Two dollars (\$13,982) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference docket number CWA-07-2008-0079.

Copies of the check shall be mailed to:

Chris Muehlberger
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's 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 CA/FO.

General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

12/1/08
Date

Karen A. Flourney
William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

12/1/08
Date

Chris Muehlberger
Chris Muehlberger
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
NORVERN, L.L.C.

11-24-08
Date

Norman Hansmeyer

Name (Print) Norman Hansmeyer

Title owner/member

IN THE MATTER of Norvern, L.L.C.
Docket No. CWA-07-2008-0079

IT IS SO ORDERED. This Order shall become effective immediately.



Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

January 26, 2009
Date

IN THE MATTER OF Norvern, L.L.C., Respondent
Docket No. CWA-07-2008-0079

CERTIFICATE OF SERVICE

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

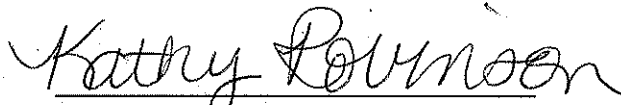
Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Norman Hansmeyer, Owner/Member
Norvern, L.L.C.
112 South Locust
Winfield, Iowa 52659

Dated: 1/26/09



Kathy Robinson
Hearing Clerk, Region 7