

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
)  
IOWA DEPARTMENT OF )  
TRANSPORTATION )  
)  
and )  
)  
PETERSON CONTRACTORS, INC. )  
)  
Respondents )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
)

Docket No. CWA-07-2010-0055

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 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondents are the Iowa Department of Transportation (“IDOT”), a state agency in the State of Iowa and Peterson Contractors, Inc., a corporation authorized to conduct business in the State of 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 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 stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater 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 stormwater 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 stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “stormwater 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 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.

10. IDNR issued a general permit for the discharge of stormwater under the NPDES, General Permit No. 2. The general permit governs stormwater discharges associated with construction or land disturbance activity. The general permit became effective October 1, 2002, through October 1, 2007. This permit was reissued on October 1, 2007, and expires on October 1, 2012.

#### Factual Background

11. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondents were the owner and/or operator of a construction site known as the U.S. Highway 30 Road Construction Project, located near and through the cities of Tama and Toledo, Iowa (“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. Stormwater, snow melt, surface drainage and runoff water leaves Respondents' facility and flows into two unnamed tributaries of the Iowa River. The runoff and drainage from Respondents' facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

15. The Site has "stormwater discharge 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. Respondents discharged pollutants into "navigable water" as defined by CWA Section 502(7), 33 U.S.C § 1362(7).

17. Stormwater runoff from Respondents' 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. Respondents' 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 IDOT applied for and was issued NPDES permit coverage under the general permit described in Paragraph 10 above. IDNR assigned Respondent IDOT Permit No. IA-15984-15763, providing Respondents with NPDES permit coverage through July 15, 2011.

20. Respondents' permit requires the permittee to develop a Stormwater Pollution Prevention Plan ("SWPPP") that identifies any contractors that will be used to implement the plan and each contractor or subcontractor must sign a certification statement. Upon signing the certification, the contractor or subcontractor is a co-permittee with the owner and other co-permittee contractors.

21. Respondent Peterson Contractors, Inc. signed this certification statement, in accordance with Part IV.G of Respondents' permit, and is thus a co-permittee with IDOT on the Site.

22. Respondents' permit coverage is for the U.S. Highway 30 Road Construction Project around and through the cities of Tama and Toledo, Iowa, including the construction of a four lane by-pass over Deer Creek. The total length of the road building project is approximately 7.5 miles and the total disturbed area is 420 acres. Respondent Peterson Contractors, Inc. is a co-permittee with Respondent IDOT for the portions of the Site that extend from Station 268+50.0 to Station 295+0.0.

23. On or about September 10-11, 2009, 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 management of stormwater at the site in accordance with the CWA.

#### Findings of Violation

##### **Failure to Properly Install and Maintain Best Management Practices (BMPs)**

24. The facts stated in Paragraphs 11 through 23 above are herein incorporated.

25. Part IV of Respondents' permit requires that the Respondents develop a plan that shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharge to ensure compliance with the terms and conditions of Respondents' permit. Part IV Section D.2 of Respondents' permit requires that the Respondents' SWPPP shall include structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the Site.

26. Part VI, Section M of Respondents' permit requires the permittee, at all times, to properly operate and maintain all systems of treatment and control that are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of the stormwater pollution prevention plan.

27. Part IV, Section D.2, A.1 of Respondent's permit requires that stabilization measures shall be initiated on all disturbed areas 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 14<sup>th</sup> day after no construction activity has occurred in such area.

28. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents had not adequately maintained silt fencing. Specifically, portions of silt fences were not properly maintained, and silt fences were undermined, overrun, or filled with sediment.

29. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents had not properly installed rock check dams through Respondents' portion of the Site, allowing the migration of sediment offsite.

30. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents had not properly stabilized portions of the Site in sloped areas near ramps after construction activities had ended.

31. Respondents' failure to properly install and maintain BMPs is a violation of Respondents' 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 Develop an Adequate Stormwater Pollution Prevention Plan (SWPPP)**

32. The facts stated in Paragraphs 11 through 23 above are herein incorporated.

33. Part IV of the Respondents' permit requires that Respondents develop a SWPPP that shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharge from the construction activities at Respondents' construction site. The SWPPP shall describe and ensure the implementation of the practices which will be used to reduce the pollutants in stormwater discharge and to assure compliance with the terms and conditions of this permit, including the location of structural and nonstructural controls. The SWPPP shall be retained at the construction site from the date construction activities begin to the date of final stabilization.

34. The inspection referenced in Paragraph 23 above, revealed that Respondents' SWPPP failed to adequately describe best management practices and stormwater management practices by failing to identify on a site map the locations for the installation of BMPs, particularly silt fences, ditch locations, and locations of temporary sedimentation basins. Additionally, Respondents' SWPPP was not available onsite while construction activities were ongoing.

35. Respondents' failure to adequately develop a SWPPP and to retain the SWPPP at the construction site is a violation of Respondents' 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**

36. The facts stated in Paragraphs 11 through 23 above are herein incorporated.

37. Part IV, Section D.4 of the Respondents' permit requires that qualified personnel shall inspect areas of the construction site that have not been finally stabilized at least once every seven calendar days and within twenty-four hours of the end of a storm with rainfall that is .5 inches or greater.

38. The EPA inspection referenced in Paragraph 23 above, revealed that Respondents, on at least eight occasions, did not perform and document Site inspections at a minimum of every seven calendar days, as required by Respondents' permit.

39. Respondents' failure to perform and document site inspections is a violation of Respondents' 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

40. 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), Respondents are hereby ORDERED to take the actions described in Paragraphs 41 through 43.

41. Within thirty (30) days of the Effective Date, as defined in Paragraph 52 herein, Respondents shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of Respondents' permit.

#### **Submissions**

42. Within thirty (30) days of the effective date of this Order, the Respondents 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.

43. In the event that Respondents believe complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondents 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.

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

Mr. Michael Boeglin  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

### **Acceptance of Submissions and Incorporation into the Order for Compliance**

45. Upon receipt, EPA will review all documents submitted by Respondents pursuant to Paragraphs 42 or 43, and accept such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 46, below. Upon acceptance, documents submitted under Paragraphs 42 or 43 above, or resubmitted pursuant to Paragraph 46, below, shall be deemed incorporated into and become enforceable under this Order, or at EPA's discretion, shall be incorporated into, and become enforceable under, a separate order issued under the authority of the CWA.

### **Modification and Resubmission of Documents**

46. If required by EPA pursuant to Paragraph 45 above, Respondents shall, within fifteen (15) days of receipt of any written comments from EPA regarding the documents submitted by Respondents pursuant to this Order, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA. The parties may agree, in writing, to a longer period of time for resubmission of such documents.

### **Certification**

47. All submissions made by Respondents to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

### **General Provisions**

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

48. Compliance with the terms of this Order shall not relieve Respondents 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.

49. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309 of the CWA, 33 U.S.C. § 1319, 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 CWA for any violation whatsoever.

#### **Access and Requests for Information**

50. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondents' facility, and/or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

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

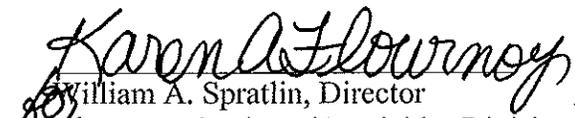
#### **Effective Date**

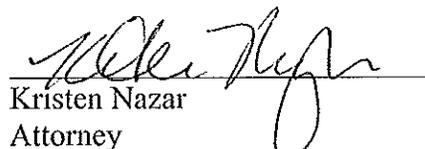
52. The terms of this Order shall be effective and enforceable against Respondents upon the date of their receipt of an executed copy of the Order.

### Termination

53. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 22nd day of February, 2010.

  
William A. Spratlin, Director  
Water, Wetlands and Pesticides Division

  
Kristen Nazar  
Attorney  
Office of Regional Counsel

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:

John M. Smythe, P.E.  
Office Director, Office of Construction  
Iowa Department of Transportation  
800 Lincoln Way  
Ames, Iowa 50010

Cordell Q. Peterson, Registered Agent  
Peterson Contractors, Inc.  
104 Black Hawk  
Reinbeck, Iowa 50669

Sent via first class mail to:

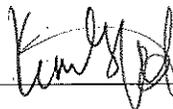
Ed Tormey  
Bureau Chief, Legal Services  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319

Dennis Ostwinkle  
Iowa Department of Natural Resources  
1023 West Madison Street  
Washington, Iowa 52353

Jim Stricker  
Iowa Department of Natural Resources Field Office #5  
401 SW 7<sup>th</sup>, Suite 1  
Des Moines, Iowa 50309

**FEB 23 2010**

\_\_\_\_\_  
Date

  
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