

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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)
)
)
City of Kansas City, Missouri)
City Hall)
414 East 12th Street)
Kansas City, Missouri 64106)
)
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
)

Docket No. CWA-07-2010-0005

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

AUTHORITY

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, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division (“WWPD”).

Statutory and Regulatory Framework

1. 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.

2. 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.

3. 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, 33 U.S.C. § 1342(p), 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.

4. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person/agency is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, EPA shall require the submission of any information reasonably necessary to make such a determination. Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any facility and its related appurtenances.

5. 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.

6. 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.

7. The regulations at 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15)(i) establish requirements for stormwater discharges associated with industrial activity from construction sites which include clearing, grading, and excavation activities that result in the disturbance of one (1) or more acres of total land area.

8. 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 authorized states for violations of the CWA.

9. MDNR issued a General Permit for the discharge of stormwater under the NPDES, Permit No. MO-R100006. This General Permit became effective on May 31, 2007 and will expire on May 30, 2012. 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). Respondent's permit included, among other requirements, that:

- a. The authorized legal description for the land disturbance site was limited to "Various city wide, Jackson County."
- b. The owner of the property or right-of-way on which a land disturbance site is located is responsible for compliance for the permit, and;
- c. Before any land disturbance activity takes place at the site authorized by the permit, a Stormwater Pollution Prevention Plan (SWPPP) must be developed.

FINDINGS

10. The City of Kansas City, Missouri ("Respondent") is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

11. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as NW Barry Road Improvements ("Site"), which is approximately one mile long and covers approximately 25 acres along NW Barry Road west of North Conant Avenue to NW Potomac Avenue in Kansas City, Missouri.

12. The Respondent has conducted, among other things, clearing, grading and excavation activities at the Site.

13. The NPDES permit application regulations for stormwater discharges at 40 CFR §122.26(b)(14)(x), 40 CFR §122.26(b)(15)(i) and relevant sections of the Missouri Code of State Regulations are applicable to this Site since clearing, grading and/or excavation activities are equal to or greater than one (1) acre of total land area.

14. Stormwater, snow melt, surface drainage and runoff water leaves Respondent's Site and goes into Copper Creek, Rush Creek, and Weatherby Lake, waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).

15. On June 2, 2009, through June 9, 2009, an EPA inspector 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 Respondent's compliance with the CWA. The EPA inspection documented that:

- a. Land disturbance activity at the Site had occurred in Platte County, beyond the geographic scope authorized by Respondent's NPDES permit;
- b. Utility companies, acting under the authority of Respondent's permit, began land disturbance activities at the Site prior to development of Respondent's SWPPP, and;
- c. The utility companies that commenced land disturbance activities at the Site did not properly install and/or maintain best management practices (BMPs) at the time of inspection.
- d. As a result of the poorly maintained BMPs, sediment from the Site was observed entering into Copper Creek, Rush Creek, and Weatherby Lake.

16. Respondent's violations of its NPDES permit and its unauthorized discharges of pollutants into waters of the United States, as described in the paragraph above, are violations of Sections §301 and §402 of the CWA.

Order for Compliance

Based on the Findings of Violation set forth above, and pursuant to 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 following actions to eliminate their violations of the CWA:

17. Within thirty (30) days of receipt of this Order, Respondent shall submit to EPA the following:

- a. A copy of Respondent's approved and final SWPPP showing any changes to the Site's BMPs and/or any revisions to the SWPPP since commencement of construction at the Site;
- b. Photographs of the Site's BMPs showing how Respondent is in full compliance with the terms of Respondent's SWPPP and its NPDES permit, and;
- c. Documentation from MDNR showing that Respondent is authorized to perform construction activities at the Site outside of Jackson County, Missouri.

18. The submission of documents by Respondents, as identified in paragraph 17, shall include the following written statement, followed by the Respondents' signature:

I certify under penalty of law that 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 violations.

19. All documents to be submitted to EPA under this Order shall be submitted by mail to the following:

Delia Garcia, PhD
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

20. In the event Respondents fail to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order against the Respondents and/or seek additional penalties against the Respondents for such noncompliance with the terms of the Order.

General Provisions

Effect of Compliance with the terms of this Order

21. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of his responsibility to obtain any required local, state, and/or federal permits.

22. 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 Section 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

23. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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

24. 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.

Parties Bound

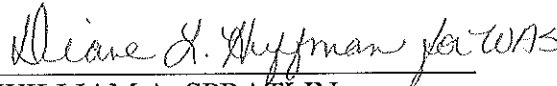
25. This Order shall apply to and be binding upon the Respondent, his agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

Effective Date

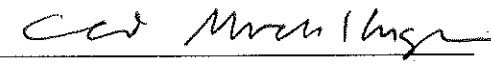
26. The terms of this Order shall be effective and enforceable against Respondent upon the date of his receipt of an executed copy of the Order.

Termination

27. 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.


WILLIAM A. SPRATLIN
Director
Water, Wetlands and Pesticides Division

10-28-09
DATE


CHRIS MUEHLBERGER
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7

10.19.09
DATE

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 mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Damon Hodges
Project Manager
City of Kansas City, Missouri
City Hall
414 East 12th Street
Kansas City, Missouri 64106

Sent via first class mail to:

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

Mr. Karl Fett, Director
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710.

Ced Mrentky
Date

10.30.09