

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

07 SEP 19 PM 1:44
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CWA-07-2007-0081
)
Pres Development, LLC)
NE 80th and NE Antioch) FINDINGS OF VIOLATION
Kansas City, Missouri 64118) 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 Pres Development, LLC., a company incorporated under the laws of Missouri 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 discharges 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 a NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to 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-R100M83 (Permit). The Permit became effective on August 15, 2005, and expires August 25, 2007. The Permit governs storm water 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

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 an approximately 62 acre residential construction site known as Presidential Park Subdivision located at the intersection of Northeast 80th Street and Northeast Antioch Road in Kansas City, Missouri (Site). Construction activities at the Site including clearing, grading and excavation disturbed approximately fifty-four (54) or more acres of total land area.

13. Storm water, snow melt, surface drainage, and runoff water have the potential to leave the Respondent’s facility and drain to an unnamed tributary to Shoal Creek, which discharges into Shoal Creek. Shoal Creek is a “navigable water” as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Any runoff and/or 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 associate 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 failed to maintain and/or install Best Management Practices (BMPs) which could potentially result in the discharge of pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C. §1362.

17. Storm water runoff from Respondent’s construction site could result 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 for Pres Development, LLC. in paragraph 10 above. MDNR assigned Respondent permit No. MO-R100M83.

20. On December 5-6, 2005 and March 13, 2007, EPA 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 PROPERLY DESIGN, IMPLEMENT OR MAINTAIN BEST MANAGEMENT PRACTICES

21. The facts stated in paragraphs 1 through 20 above are herein incorporated.

22. Part 11 of the Requirements and Guidelines section of Respondent’s Permit requires the permittee, at all times, to maintain all of the pollution control measures in good order to achieve compliance with the terms of the permittee’s General Permit.

23. At the EPA inspection referenced in paragraph 20 above, the EPA inspector observed pollution control measures that were not properly maintained in good order as required by Respondent’s general permit referenced in paragraph 10. Specifically, the EPA inspector noted the Respondent’s failure to properly maintain erosion control measures around slopes, culverts, and curbs at numerous areas of the Site as well as at the head of the drainage pipe which runs into small basin B2. Such erosion control measures include, but are not limited to, stabilization, silt fencing and sedimentation basins.

24. Respondents failure to properly design, implement and maintain pollution control measures at the Site 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

25. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to take the actions described in paragraphs 26 through 30.

26. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever correction 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) Within thirty (30) days of the effective date of this Order, the Respondent shall take specific actions to properly implement pollution control measures that will correct the violations cited herein; and
- b) Maintain all pollution control measures and systems on site in good and working order.

27. 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.

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

Submissions

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

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

30. 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 Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

31. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

32. 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. 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 election by the 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

33. 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 for Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

34. 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

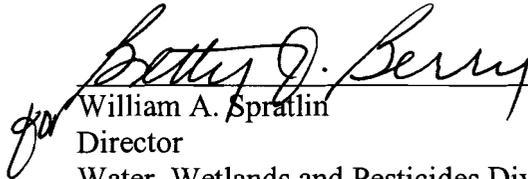
35. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

36. This Order shall remain in effect until 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 _____ day of _____, 2007.

09/17/07
Date



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

9-4-07
Date



Jennifer E. Trotter
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Pres Development, LLC, Respondent
Docket No. CWA-07-2007-0081

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation and Administrative Order for Compliance was sent this day in the following manner to the addressees:

Copy by Certified Mail Return Receipt to:

Mr. Kevin Kaser
Pres. Development
7914 Spruce Avenue
Kansas City, Missouri 64119

and

Pres Development, LLC
c/o Registered Agent, Dennis L. Coomes
8341 NW Mace Road
Kansas City, Missouri 64152

Copy by First Class Mail to:

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. Of Natural Resources
PO Box 176
Jefferson City, Missouri 65102

Dated: 9/20/07

E. A. H. C. W. H. C. H. H. H.