

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)
)
Lei Valley Redevelopment, LLC) Docket No. CWA-07-2005-0220
P.O. Box 372)
Bonner Springs, Kansas)
)
Respondent)
)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

CONSENT AGREEMENT AND
FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region VII (EPA) and Lei Valley Redevelopment L.L.C. (Respondents) have agreed to settle this action before EPA files a complaint. 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, 40 C.F.R. Part 22 (Consolidated Rules).

2. This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's violations of the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*

ALLEGATIONS

Jurisdiction

3. This is an administrative action for the assessment of civil penalties instituted pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

4. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging Stormwater runoff into the navigable waters of the United States without obtaining the necessary permit(s) required by Section 402 of the CWA, 33 U.S.C. § 1342.

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, 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, 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.

8. Pursuant to Section 402(p) of the CWA, 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 acres of total land area that are not part of a larger common plan of development or sale.

11. The Kansas Department of Health and Environment (KDHE) is the state agency with authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

12. The KDHE implemented a general permit for the discharge of storm water under the NPDES, Permit No. S-MCST-0110-1 (the General Permit). The General 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

13. Respondent is Lei Valley Redevelopment, LLC, a corporation registered under the

laws of Kansas and authorized to conduct business in the State of Kansas.

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

15. At all times relevant to this action, Respondent was the owner and/or operator of 23.9 acres at 13700 Kansas Avenue in Bonner Springs, Kansas (the Site). Construction activities began at the Site on or around May 17, 2004, and have included clearing, grading, and excavation. Respondent’s construction activities at the Site resulted in the disturbance of five or more acres of total land area or they resulted in the disturbance of less than five acres that was part of a larger common plan of development or sale.

16. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and goes into a tributary to Wolf Creek. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

17. The storm water draining from the Site contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

19. The Site is or was a “point source” that caused the “discharge of pollutants” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

20. Wolf Creek and its tributary or tributaries into which Respondent discharged storm water are “navigable waters” as defined by CWA Section 502(7), 33 U.S.C § 1362(7).

21. 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.

22. On June 29, 2004, EPA contractors 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 treatment and disposal of storm water at the site in accordance with the CWA. At the time of the inspection, Respondent was unable to produce copies of its NPDES permit or its storm water pollution prevention plan (SWPPP) upon request.

23. Three days after the inspection of the Site by EPA contractors, on July 2, 2004, Respondent submitted a Notice of Intent (NOI) for coverage under the KDHE General Permit.

24. On July 14, 2004, permit #KS060007 (Federal Permit No. KS R 101731) became effective for Respondent. The permit expires on December 31, 2006.

Findings of Violation

Failure to Obtain a Permit

25. The facts stated in paragraphs 13 through 24 above are herein incorporated.

26. KDHE General Permit number S-MCST-0110-1 requires owners/operators of construction sites to apply for and obtain an NPDES permit authorizing the discharge of storm water runoff prior to commencing construction at the project site.

27. The inspection referenced in paragraph 22 above revealed that Respondent did not have an NPDES Permit at that time and therefore, was discharging storm water from the Site in violation of the CWA.

28. Respondent's failure to obtain an NPDES permit is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p), and implementing regulations.

CONSENT AGREEMENT

29. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement and Final Order.

30. Respondent admits the factual allegations contained in this Consent Agreement and Final Order.

31. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.

32. Respondent and Complainant each agree to bear their own costs and attorney's fees.

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

34. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of fifteen thousand nine hundred and ninety four dollars (\$15,994) within 30 days of the effective date of the Final Order

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

U.S. EPA Region VII
P.O. Box 371099M
Pittsburgh, PA 15251

The check must include the docket number and the name of the case. Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101; and

Michael Massey
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

36. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

37. Respondent's failure to pay any portion of the civil penalty of fifteen thousand nine hundred and ninety four dollars (\$15,994) in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

38. This Consent Agreement and Final Order addresses all civil and administrative penalty claims for the CWA violations identified above. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order.

39. 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.

40. This Final 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), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

For the Respondent:

4/11/05
Date

Lei Valley Redevelopment
Guy Tiner

For the United States Environmental Protection Agency - Region VII

6/14/05
Date

Michael P. Massey
Michael P. Massey
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region VII

06/14/05
Date

Leo J. Alderman
Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: June 20, 2005

IN THE MATTER OF Lei Valley Redevelopment, LLC, Respondent
Docket No. CWA-07-2005-0220

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:

Michael Massey
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:

Guy Tiner
Registered Agent for
Lei Valley Redevelopment LLC
P.O. Box 372
Bonner Springs, Kansas 66012-0000

and

Alan Brooks P.E.
Bureau of Water (Construction Permits)
Division of Environment
KDHE
1000 SW Jackson, Suite 420
Topeka, Kansas 66612

Dated: 6/20/05


Kathy Robinson
Regional Hearing Clerk