

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 )  
)  
Hidden Ridge, L.L.C. ) DOCKET NO. CWA-07-2005-0114  
Blue Springs, Missouri )  
)  
Respondent. )  
)  
) COMPLAINT AND  
) CONSENT AGREEMENT/  
) FINAL ORDER  
Proceedings under )  
Section 309(g) of the Clean Water Act, )  
33 U.S.C. § 1319(g) )

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**COMPLAINT**

**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 Complaint 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 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is Hidden Ridge, L.L.C., a company incorporated under the laws of State of Missouri and authorized to conduct business in the State of Missouri.

### **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), the 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) 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.

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 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. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

12. The MDNR issued a NPDES General Permit for the discharge of storm water associated with construction activities, Permit No. MO-R101xxx (the Permit). The permit became effective on February 8, 2002, and expires on February 7, 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**

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 Shadow Glen Townhomes located at NW 1/4, SW 1/4, Section 35, Township 49 North, Range 31 West, Jackson County, Missouri (the 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.

15. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and goes into an unnamed tributary to East Fork Little Blue River to Lake Tapawingo. 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. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. The Site was a “point source” which caused the “discharge of pollutants” as defined by CWA Section 502, 33 U.S.C. § 1362.

19. Respondent discharged pollutants into an unnamed tributary to East Fork Little Blue River to Lake Tapawingo. Lake Tapawingo is a “navigable water” as defined by CWA Section 502, 33 U.S.C § 1362.

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. MDNR assigned Respondent Permit No. MO-R104734, which was issued on May 17, 2002.

22. On June 23 and 27, 2003, contractors for the 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 the treatment and disposal of storm water at the site in accordance with the CWA.

### **Findings of Violation**

#### **Failure to Maintain Pollution Control Measures - Count 1**

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

24. Part 11 of the Requirements and Guidelines section of Respondent's permit requires Respondent to maintain all pollution control measures and systems in good order to achieve compliance with the terms of the General Permit.

25. The inspection referenced in paragraph 22 above, revealed that Respondent's pollution control measures, which included sediment capture devices (i.e. filter fabric fences and straw bales), were not properly maintained.

26. Respondent's failure to properly maintain its pollution control measures is a violation of Part 11 of the Requirements and Guidelines section 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).

27. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 44 below.

#### **Failure to Install and/or Implement Appropriate Best Management Practices - Count 2**

28. The facts stated in paragraphs 13 through 27 above are herein incorporated.

29. Part 8(e) of the Requirements and Guidelines section of Respondent's permit states that storm water runoff from disturbed areas which leave the site boundary shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the construction site.

30. The inspection referenced in paragraph 22 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site at lot perimeters, storm drain inlets and the site entrance.

31. Respondent's failure to install appropriate impediments to sediment movement is a violation of Part 8(e) of the Requirements and Guidelines section 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).

32. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 44 below.

### **Failure to Perform and Document Site Inspections - Count 3**

33. The facts stated in paragraphs 13 through 32 above are herein incorporated.

34. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that regular inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. In addition, it requires that any deficiencies be noted in a report and corrected within seven calendar days of the inspection. The report is to be kept at a site which is readily available from the permitted site until final stabilization is achieved.

35. The inspection referenced in paragraph 22 above, revealed that Respondent did not perform site inspections at a minimum of once per week, note any deficiencies in a report, correct the deficiencies within seven calendar days of the inspection, and keep the report at a site which is readily available from the permitted site.

36. Respondent's failure to perform and document site inspections is a violation of Part 10 of the Requirements and Guidelines section 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).

37. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 44 below.

### **CONSENT AGREEMENT**

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

39. Respondent neither admits nor denies the factual allegations or Findings of Violations contained in this Complaint and Consent Agreement and Final Order.

40. Respondent waives any right to contest the allegations and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

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

42. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

43. Solely for the purpose of settling this matter and thereby avoiding the expense and uncertainties involved in a formal adjudication, Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

44. Respondent agrees to pay a mitigated civil penalty of Thirty-six Thousand One Hundred and Seventy-nine Dollars (\$36,179.00) plus interest in the amount of One Thousand Three Hundred and Seventy-nine Dollars (\$1,379.00). The civil penalty will be paid in four separate payments with Ten Thousand Dollars (\$10,000.00) paid within thirty (30) days of the effective date of the Consent Agreement and Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment will be in the amount of Ten Thousand Dollars (\$10,000) and will be paid within one hundred and eighty (180) days of the effective date of the Consent Agreement and Final Order. The third payment will be in the amount of Ten Thousand Dollars (\$10,000.00) and will be paid within one year of the effective date of the Consent Agreement and Final Order. The final payment of the remainder of the civil penalty in the amount of Seven Thousand Five Hundred and Fifty-eight Dollars (\$7,558.00) will be paid within five hundred and forty (540) days of the effective date of the Consent Agreement and Final Order.

45. The penalty payment made by Respondent pursuant to this Complaint and Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal taxes.

46. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and Final Order.

#### FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty Thirty-six Thousand One Hundred and Seventy-nine Dollars (\$36,179.00) plus interest in the amount of One Thousand Three Hundred and Nine Dollars (\$1,379.00), as set forward in paragraph 34 of the Consent Agreement. Each payment shall identify the Respondent by name and docket number and shall be by certified or cashiers check made payable to "United States Treasury," and remitted to:

EPA-Region VII  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

Copies of the check shall be mailed to:

Melissa A. Coleman  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
901 North 5th Street  
Kansas City, Kansas 66101

and

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

2. 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. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest. A late payment handling charge of Fifteen Dollars (\$15) will be imposed for payments received thirty (30) days after any date of payments, and an additional Fifteen Dollars (\$15) will be charged for each subsequent thirty (30) day period.

3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. The EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

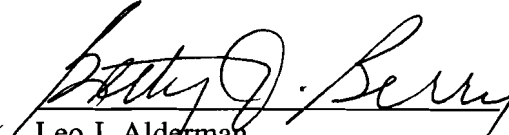
5. With respect to matters not addressed in this Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.


7. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

01/24/05  
Date

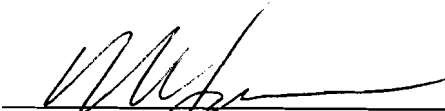
  
Leo J. Alderman  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII

1-24-05  
Date

  
Melissa A. Coleman  
Assistant Regional Counsel  
Region VII

RESPONDENT:  
Hidden Ridge, L.L.C.

1-19-05  
Date

  
Name: MARK YANLIK  
Title: member



IT IS SO ORDERED.

April 6, 2005  
Date

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

IN THE MATTER OF Hidden Ridge, L.L.C., Respondent  
Docket No.: CWA-07-2005-0114

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Melissa A. Coleman  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Hidden Ridge, L.L.C.  
C/o Steve D. Bermeister, Esq.  
Burmeister & Associates  
Truman Law Building  
14701 E. 42<sup>nd</sup> Street  
Independence, Missouri 64055

Dated: 4/7/05

  
Kathy Robinson  
Regional Hearing Clerk