

Parties

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

3. Respondent is Johnson-Yust Investment Co., LLC, a company registered under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

4. 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.

5. 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.

6. 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.

7. Pursuant to Section 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.

8. 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.

9. 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.

10. 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.

11. The MDNR issued a General Permit for the discharge of storm water under the NPDES Permit No. MO-R109xxx. This General Permit became effective on March 8, 2002, and expires on March 7, 2007. The 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). The General Permit also applies to land disturbance activities near valuable resource waters.

Factual Background

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

13. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Mason Glen located at the northeast corner of Highway 'N' and Duello Road, O'Fallon, Missouri (hereinafter 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.

14. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes into tributaries of Peruque Creek and Dardenne Creek, which are tributaries to Lake St. Louis. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

16. The Site has "storm water 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).

17. Respondent discharged pollutants into "navigable waters" as defined by CWA Section 502, 33 U.S.C. § 1362.

18. Storm water runoff from Respondent's 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).

19. 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.

20. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 12 above. MDNR assigned Respondent permit numbers MO-R109K05, MO-R109K06, MO-R109K07, and MO-R109K08, for Phases I-IV of the Mason Glen development, all of which were issued on June 27, 2005.

21. On January 19, 2006, and January 20, 2006, 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 compliance with the CWA.

Findings of Violation

22. The facts stated in paragraphs 13 through 21 above are herein incorporated.

Count 1

Failure to Install Appropriate Best Management Practices

23. Part 8(e) of the Requirements and Guidelines section of Respondent's permit states that storm water runoff from disturbed areas which leaves 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 land disturbance site.

24. The EPA inspection referenced in paragraph 21 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site.

25. In Respondent's Storm Water Pollution Prevention Plan (SWPPP) for Phase III, developed pursuant to Respondent's permit, the Sequence of Major Events requires installation of sedimentation basins prior to clearing and grubbing.

26. The EPA inspection referenced in paragraph 21 above, revealed that Respondent failed to install Sedimentation Basin 'D' prior to clearing and grubbing.

27. Part 8(d) of the Requirements and Guidelines section of Respondent's permit states that where soil disturbing activities cease in an area for more than 14 days, the disturbed areas shall be protected from erosion by stabilizing the area.

28. The inspection referenced in paragraph 21 above, revealed that Respondent failed to stabilize areas where soil disturbing activity had ceased for more than 14 days.

29. Respondent's failure to install appropriate impediments to sediment movement 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).

Count 2

Failure to Properly Implement and Maintain Best Management Practices

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

31. The EPA inspection referenced in paragraph 21 above, revealed that Respondent had not properly installed and maintained silt fencing on the construction site.

32. The EPA inspection referenced in paragraph 21 above, revealed that Respondent had not properly installed and maintained sedimentation basins.

33. Respondent's failure to properly maintain its pollution control measures 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).

Count 3

Failure to Properly Document Site Inspections

34. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. In addition, it requires a log of each inspection to be kept. At a minimum, the inspection log shall include, *inter alia*: observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, and listing of areas where land disturbance operations have permanently or temporarily stopped. These inspection logs shall be signed by the permittee or person performing the inspection.

35. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed within a reasonable time period (not to exceed 72 hours) following heavy rains.

36. The EPA inspection referenced in paragraph 21 above, revealed that Respondent failed to keep adequate inspection logs in accordance with the Respondent's permit requirements.

37. Respondent's failure to properly document site inspections 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).

III. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

2. Respondent admits the jurisdictional allegations of 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 Final Order portion of this Consent Agreement and Final Order.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above.

7. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law. Respondent reserves any rights or defenses which it may be entitled to prevail itself of in such a proceeding.

8. Nothing contained in the Final Order portion of this 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.

9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

10. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, at the Site.

11. The effect of settlement described in paragraph 12 below is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 10 above of this Consent Agreement and Final Order.

12. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$33,000 as set forth in paragraph 1 of the Final Order.

13. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

IV. FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty-Three Thousand Dollars (\$33,000) plus interest of seven hundred forty-six dollars and eighty cents (\$746.80) in quarterly installments over a period of two (2) years for a total payment of Thirty-Three Thousand Seven Hundred Forty-Six Dollars and Eighty Cents (\$33,746.80) to be paid in full no later than October 31, 2008.

- a. The first payment of \$4,218.35 is due within thirty (30) days of the effective date of this Consent Agreement/Final Order.
- b. Subsequent installments of \$4,218.35 are due on the following dates:

- i. April 15, 2007

- ii. July 15, 2007
- iii. October 15, 2007
- iv. January 15, 2008
- v. April 15, 2008
- vi. July 15, 2008
- vii. October 15, 2008.

Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately.

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

U.S. Environmental Protection Agency Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payments shall identify the Respondent by name and docket number (CWA-07-2007-0003). Copies of the check shall be mailed to:

Kristi Denney
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

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

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

General Provisions

4. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA,

33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

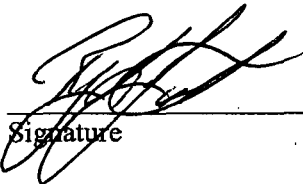
5. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

6. This 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) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

7. Respondent and Complainant shall bear their respective costs and attorney's fees.

8. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

For the Respondent:
Johnson-Yust Investment Co., LLC



Signature

11/17/06

Date

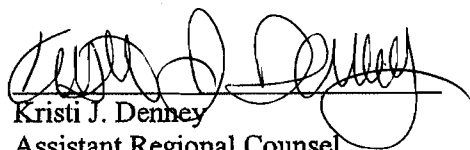
ROYCE L. YUST

Printed Name

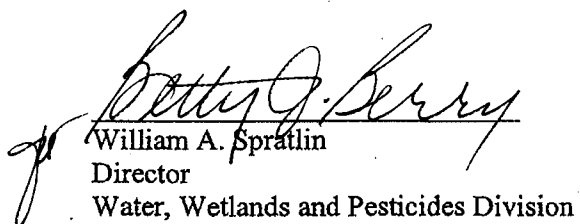
MEMBER

Title

For the Complainant:
The United States Environmental Protection Agency

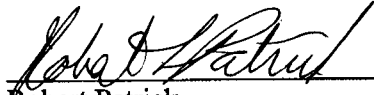

Kristi J. Denney
Assistant Regional Counsel

11/16/07
Date


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

01/10/07
Date

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

January 17, 2007

Date

IN THE MATTER OF Johnston-Yust Investment Co., LLC, Respondent
Docket No. CWA-07-2007-0003

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:

Kristi J. Denney
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:

Royce L. Yust, Member
Johnson-Yust Investment Co., LLC
105 Triad Center West
O'Fallon, Missouri 63366

Dated: 1/17/07



Kathy Robinson
Hearing Clerk, Region 7