

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

07 AUG 14 PM 4:04
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Riefe's, Inc.) DOCKET NO. CWA-07-2007-0049
1417 West Locust Street)
Davenport, Iowa 52804)
)
Respondent.)
)
) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
Proceedings under)
Section 309(g) of the Clean Water Act,)
33 U.S.C. § 1319(g))

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 United States Environmental Protection Agency's 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 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 33 U.S.C. § 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 VII, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII (Complainant).

4. Respondent is Riefe's Inc., a company incorporated under the laws of the state of Iowa and authorized to conduct business in the state of Iowa.

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.

6. 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.

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), 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 Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa 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.

12. The IDNR issued NPDES General Permit No. 2 for the discharge of storm water associated with construction activities (the Permit). The Permit became effective on October 1, 2002, and expires on October 1, 2007. The Permit governed storm water discharges associated with large construction activity consisting of any activity (e.g. clearing, grading, excavating, etc.)

which disturbs a cumulative total of five (5.0) or more acres or that is part of a larger common plan of development or sale which will disturb a cumulative total of five or more acres.

Factual Background

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

14. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Hidden Meadows First Addition, generally located at West 11th Street and Hidden Valley Drive, in Davenport, Iowa and/or within the Southeast ¼ of Section 30, Township 78 North, Range 3 East, Scott County, Iowa (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 at Respondent's facility enters within the Site an unnamed tributary of Black Hawk Creek in the Mississippi River Basin. 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 to an unnamed tributary of Black Hawk Creek in the Mississippi River Basin. The unnamed tributary of Black Hawk Creek 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 to be 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. IDNR assigned Respondent Permit No. IA-9919-9718, which was issued on August 9, 2005.

22. On April 19, 2006, 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 Violations

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

Count 1- Failure to Have an Adequate Storm Water Pollution Prevention Plan (SWPPP)

24. The General Permit, Part IV. Storm Water Pollution Prevention Plans, requires that a SWPPP be developed and implemented prior to the submittal of the Notice of Intent, which is prior to the initiation of construction activity, and maintained throughout the period of coverage under the General Permit.

25. The General Permit, IV. Storm Water Pollution Prevention Plans, requires that a SWPPP be developed and implemented to minimize erosion on disturbed areas; minimize the discharge of sediment and other pollutants in storm water runoff; and assure compliance with the requirements of the General Permit.

26. The inspection referenced in paragraph 22 above, revealed that Respondent did not develop an adequate SWPPP compliant with the General Permit, IV. Storm Water Pollution Prevention Plans.

27. Respondent's failure to develop an adequate SWPPP is a violation of Section IV. Storm Water Pollution Prevention Plans 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).

28. 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 set forth in paragraph 43 below.

Count 2 – Inadequate or Failure to Implement Pollution Control Measures

29. The General Permit, IV. Storm Water Pollution Prevention Plans requires Respondent to develop and implement erosion and sediment controls, including temporary and permanent stabilization practices and structural practices (i.e. silt fences).

30. The inspection referenced in paragraph 22 above, revealed that Respondent's erosion and sediment control measures, which included stabilization and structural practices (i.e. silt fences), were inadequate or not implemented.

31. Respondent's failure to properly implement its pollution control measures is a violation of Section IV. Storm Water Pollution Prevention Plans 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 set forth in paragraph 43 below.

Count 3 - Failure to Properly Design, Implement and/or Maintain Appropriate Best Management Practices

33. The General Permit, IV. Storm Water Pollution Prevention Plan (SWPPP) states that structural practices and controls used shall be effective in minimizing erosion and sediment release from the site, and in protecting the water quality in the receiving stream or water body. The controls utilized include appropriate impediments to sediment movement prior to leaving the construction site (i.e. sedimentation basin and silt fences).

34. 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 and prior to reaching the unnamed tributary that flows into Black Hawk Creek. Respondent did not install appropriate impediments to sediment movement, including properly designing a sedimentation basin and surrounding silt fences.

35. Respondent's failure to install appropriate impediments to sediment movement is a violation of Section IV. Storm Water Pollution Prevention Plan (SWPPP) 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).

36. 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 set forth in paragraph 43 below.

CONSENT AGREEMENT

37. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/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.

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

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

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

41. 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.

42. 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.

43. Respondent agrees to pay a mitigated civil penalty of Twenty-four Thousand Dollars (\$24,000) within thirty (30) days of the effective date of the Consent Agreement and Final Order.

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

45. 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/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 of Twenty-four Thousand Dollars (\$24,000) within thirty (30) days of receipt of a copy of this fully executed Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashiers check made payable to "Treasurer, United States of America," and remitted to:

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

Copies of the check shall be mailed to:

Melissa A.C. Bagley

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

and

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

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

4. 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, 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.

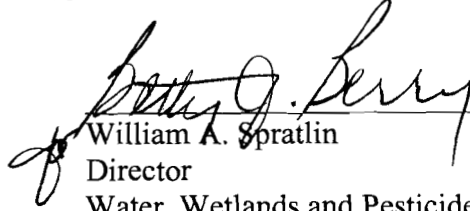
6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

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

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

08/09/07

Date



William A. Spratlin

Director

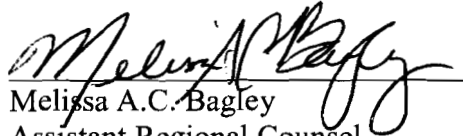
Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency

Region VII

8/8/07

Date



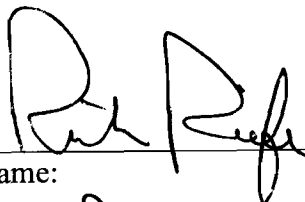
Melissa A.C. Bagley

Assistant Regional Counsel

Region VII

RESPONDENT:
Riefe's, Inc.

6/01/07
Date


Name:
Title: President

IT IS SO ORDERED.

August 14, 2007
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order 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 below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

Riefe's, Inc.
c/o Registered Agent: Richard D. Riefe
1417 West Locust Street
Davenport, IA 52804.

Dated this 1 day of June, 2007.

Richard D. Riefe
Name Richard D. Riefe

IN THE MATTER OF Riefe's, Inc., Respondent
Docket No. CWA-07-2007-0049

CERTIFICATE OF SERVICE

I certify that a true and correct copy of 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.C. Bagley
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:

Riefe's, Inc.
c/o Registered Agent: Richard D. Riefe
1417 West Locust Street
Davenport, Iowa 52804

Dated: 8/14/07


Kathy Robinson
Hearing Clerk, Region 7