

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)

) Docket No. CWA-07-2006-0122

)
)
) Ward Development & Investment Co.
) 620 North Outer Road
) Grain Valley, MO 64029

)
)
) CONSENT AGREEMENT
) FINAL ORDER

) Respondent
)

)
) Proceedings under Section 309(g) of the
) Clean Water Act, 33 U.S.C. § 1319(g)
)

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Ward Development & Investment Co., (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus 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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

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 Consent Agreement and Final Order 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 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 Ward Development & Investment Co., a company registered under the laws 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), 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 (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. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

12. The MDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R101xxx. This General Permit became effective on February 8, 2002, and expires on February 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).

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 Woodbury Villas located at the southwest corner of Duncan Road and Hedgewood Drive, Grain Valley, Missouri ("Villas"). Construction activities occurred at the Villas 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. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Woodbury Plat II located near Duncan Road and Woodbury Lane, Grain Valley, Missouri ("Plat II"). Construction activities occurred at Plat II 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.

16. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Woodbury Plat III located between Woodbury Drive and Cedar Lane, Grain Valley, Missouri ("Plat III"). Construction activities occurred at Plat III 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.

17. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes into Swiney Branch and an unnamed tributary of Swiney Branch. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

19. The sites have "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).

20. Respondent discharged pollutants into Swiney Branch and an unnamed tributary of Swiney Branch. The unnamed tributary and Swiney Branch are "navigable waters" as defined by CWA Section 502(7), 33 U.S.C § 1362(7).

21. 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).

22. 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.

23. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 12 above; specifically, MDNR assigned Respondent permit number MO-R106111 on January 23, 2004 for the Villas; and permit number MO-R105176 on March 7, 2003 for Plat II. Plat III was unpermitted at the time of the EPA inspection referenced in paragraph 24 below.

24. On April 4, 2005, EPA inspectors performed an inspection of the Villas, Plat II, and Plat III 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

Count 1

Failure to Install Appropriate Best Management Practices

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

26. 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.

27. The inspection referenced in paragraph 24 above, revealed that Respondent failed to stabilize areas in the Villas where soil disturbing activity had ceased for more than 14 days.

28. 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 land disturbance site.

29. The EPA inspection referenced in paragraph 24 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the land disturbance site via storm drains at the Villas.

30. The EPA inspection referenced in paragraph 24 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the land disturbance site via storm drains at Plat II.

31. The EPA inspection referenced in paragraph 24 above, revealed that there was no sedimentation basin for storm water to pass through prior to leaving the construction site at Plat II.

32. Part 2 of the Requirements and Guidelines section of Respondent's permit states that good housekeeping practices shall be maintained on the site to keep solid waste from entry into the waters of the state. The EPA guidance document, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices" further defines good housekeeping practices to include the cleanup of sediments that have been tracked by vehicles onto roadways.

33. The EPA inspection referenced in paragraph 24 above, revealed vehicle track-out on the streets at the Villas.

34. The EPA inspection referenced in paragraph 24 above, revealed vehicle track-out on the streets at Plat II.

35. 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 Maintain Best Management Practices

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

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

38. The EPA inspection referenced in paragraph 24 above, revealed that Respondent had not properly maintained silt fencing located at the Villas.

39. 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 Perform and Document Site Inspections

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

41. 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.

42. The EPA inspection referenced in paragraph 24 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week at the Villas.

43. The EPA inspection referenced in paragraph 24 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week at Plat II.

44. 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.

45. The EPA inspection referenced in paragraph 24 above, revealed that Respondent did not perform documented site inspections in response to heavy rain events at the Villas.

46. The EPA inspection referenced in paragraph 24 above, revealed that Respondent did not perform documented site inspections in response to heavy rain events at Plat II.

47. Respondent's failure to perform and 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).

Count 4

Discharge Without a Permit

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

49. Part 1 of the Applicability section of Respondent's permit states that any owner/operator of a site that will disturb one (1) or more acres and who disturbs land prior to permit issuance from MDNR is in violation of State and Federal law.

50. The EPA inspection referenced in paragraph 24 above revealed that Respondent commenced construction and land disturbance activities on Plat III prior to obtaining a permit.

51. Respondent's failure to obtain a permit before commencing land disturbance activities resulted in an unauthorized discharge of stormwater without a 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 5

Failure to Develop an Adequate SWPPP

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

53. Part 8 of the Requirements and Guidelines section of Respondent's permit requires that the storm water pollution prevention plan ("SWPPP") include, inter alia, the following items:

- 8(h) Sedimentation Basins: The SWPPP shall require a sedimentation basin for each drainage area with ten (10) or more acres disturbed at one time.
- 8(i) Additional Site Management BMPs: The SWPPP shall address other BMPs, as required by site activities, to prevent contamination of storm water runoff.
- 8(j) Permanent Stormwater Management: The SWPPP shall include a description of the measures that will be installed during land disturbance to control pollutants in

storm water discharges that will occur after land disturbance activity has been completed.

54. The EPA inspection referenced in paragraph 24 above revealed that the SWPPP for the Villas did not address the requirements contained in paragraphs 8(i) and 8(j) of Respondent's permit.

55. The EPA inspection referenced in paragraph 24 above revealed that the SWPPP for Plat II did not address the requirements contained in paragraphs 8(h), 8(i), and 8(j) of Respondent's permit.

56. Respondent's failure to develop an adequate SWPPP 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).

57. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the violations cited above, in the amount of \$95,000.

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. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. 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.

8. 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.

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

10. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$95,000 as set forth in paragraph 1 of the Final Order.

12. 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.

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 mitigated civil penalty of Ninety-five Thousand Dollars (\$95,000) within thirty days of the effective date of this Final Order.
2. Payment of the penalty shall be by cashier or certified check made payable to the

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“United States Treasury” and remitted to:

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

The payment shall identify the Respondent by name and docket number (CWA-07-2006-0122).
Copies of the check shall be mailed to:

Sarah Thibos
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.

Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent’s agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

5. 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.

6. 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.

7. 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

9. 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:

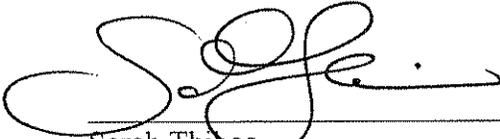

Printed Name: DAVID L. WARD
Title: PRES

6-8-06
Date

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For the Complainant:

The United States Environmental Protection Agency



Sarah Thibos
Assistant Regional Counsel

8/9/06
Date



William A. Spratlin
Division Director
Water, Wetlands and Pesticides Division

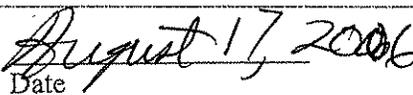
08/11/06
Date

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



Robert Patrick
Regional Judicial Officer



Date

IN THE MATTER OF Ward Development & Investment Co., Respondent
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Sarah Thibos
Assistant Regional Counsel
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David Ward, Registered Agent
Ward Development & Investment Co.
620 North Outer Road
Grain Valley, Missouri 64029

Kelly Tobin
1125 Grand Avenue, Suite 811
Kansas City, Missouri 64106

Kevin Mohammadi, Chief
Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

and

Karl Fett, Director
MDNR, Kansas City Regional Office
500 NE Colburn Road
Lee's Summit, Missouri 64086

8/17/06
Dated

Kathy Rouman
Hearing Clerk, Region 7