

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
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-07-2010-0154  
MISSOURI DEPARTMENT )  
OF TRANSPORTATION )  
) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE  
)  
Respondent )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
\_\_\_\_\_ )

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the Missouri Department of Transportation (“MoDOT”), a state agency responsible for designing, building, operating and maintaining the transportation system in the State of Missouri.

Statutory and Regulatory Framework

3. 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.

4. 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.

5. 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 stormwater. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of stormwater 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.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “stormwater 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.

9. 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 authorized states for violations of the CWA.

10. The MDNR issued a General Permit for the discharge of stormwater under the NPDES, Permit No. MO-R100XXX. This General Permit became effective on May 31, 2007, and expires on May 30, 2012. 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 and/or land disturbance activity that is reasonably certain to cause pollution to waters of the state) that are performed by or under contract to a city, county, or other governmental jurisdiction that has a stormwater control program and/or stormwater pollution prevention plan (“SWPPP”) for land disturbance activities that has been approved by MDNR.

#### Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Highway 67 Corridor (“Site”) located approximately between

Coldwater, Missouri, and Silva, Missouri. 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.

13. Stormwater, snow melt, surface drainage, and runoff water from Respondent's facility goes into Cedar Creek, Wilmore Creek, Hunter Creek, Bennett Creek, Hubble Creek, Frazier Creek, and unnamed tributaries. The runoff and drainage from Respondent's facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

15. The Site has "stormwater discharges 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).

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

17. Stormwater 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).

18. 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.

19. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 10 above. MDNR assigned Respondent permit number MO-R100007 for "various [projects] throughout the state," which was issued on June 15, 2007.

20. On June 29 – July 2, 2010, 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 the management of stormwater at the Site in accordance with the CWA.

Findings of Violation

Count 1

**Failure to Maintain Best Management Practices (“BMPs”)**

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Part 9 of the Requirements section of Respondent’s permit requires that Respondent shall maintain appropriate BMPs for the permitted sites. Part 13 of the Requirements section requires that 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.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained silt fencing. Specifically, numerous sections of silt fencing throughout the Site were down, undercut, or overloaded.

24. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained water inlet structures. Specifically, numerous water inlet structures were inundated with sediment at the control, missing a control, or had an improperly maintained control.

25. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained rock check dams. Specifically, numerous rock check dams were either fully or partially inundated with sediment. The rock check dam used to control sediment runoff into Frazier Creek had been completely bypassed. The rock check dam located at the bottom of the valley had washed out, creating a sediment trail forty feet wide and 405 yards long.

26. Part 10(l) of the Requirements section of Respondent’s permit states that all efforts should be made to prevent the deposition of earth and sediment onto roadways through the use of proper BMPs.

27. At the time of the EPA inspection referenced in paragraph 20 above, vehicle trackout was observed at nine road crossings or construction entrances/exits throughout the Site.

28. Part 10(j) of the Requirements section of Respondent’s permit requires that accumulated sediment shall be removed from sediment basins as needed to ensure the minimum volume of 3600 cubic feet is maintained.

29. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had failed to remove accumulated sediment from a sedimentation basin that was nearly full.

30. Respondent's failure to properly maintain its pollution control measures and good housekeeping practices is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 2**

#### **Failure to Install Adequate BMPs**

31. The facts stated in paragraphs 11 through 20 above are herein incorporated.

32. Part 9 of the Requirements section of Respondent's permit requires that Respondent shall select, install, use, operate, and maintain appropriate BMPs for the permitted sites.

33. Part 10(i) of the Requirements section of Respondent's permit requires that stormwater discharges from disturbed areas, which leave the Site, shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment traps, silt fences, etc. prior to leaving the land disturbance site.

34. The EPA inspection referenced in paragraph 20 above, revealed numerous disturbed areas where sediment control was inadequate or lacking altogether. Specifically, numerous areas of the Site lacked fabric silt fencing, berms, or an equivalent impediment to sediment movement. No sediment controls were installed along a drainage channel leading to Hubble Creek or along drainage channels from the construction site into Bennett Creek, Frazier Creek and Wilmore Creek.

35. The EPA inspection referenced in paragraph 20 above, revealed pipe slope drains and stormwater drains that lacked outlet controls, causing deposition of sediment and scouring.

36. Part 10(h) of the Requirements section of Respondent's permit requires that where soil disturbing activities cease in an area for 14 or more days, the permittee shall construct BMPs to establish interim stabilization.

37. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had failed to stabilize numerous areas where soil disturbing activities had ceased for more than 14 days. Specifically, there were many hillsides where either no stabilization had been attempted or where stabilization attempts (e.g., vegetation) had failed.

38. Respondent's failure to select, install, use, operate, and maintain appropriate BMPs is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33

U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3**

**Failure to Develop an Adequate Stormwater Pollution Prevention Plan**

39. The facts stated in paragraphs 11 through 20 above are herein incorporated.

40. Part 10 of the Respondent's permit requires that the Stormwater Pollution Prevention Plan ("SWPPP") include, *inter alia*, the following items:

- c. The permittee shall select appropriate structural BMPs for use at the Site and list them in the SWPPP. Examples include diverting flows from undisturbed areas away from disturbed areas, silt (filter fabric and/or straw bale) fences, earthen diversion dikes, drainage swales, sediment traps, rock check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection and outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.
- j. The SWPPP shall require a sedimentation basin for each drainage area with 10 or more acres disturbed at one time.

41. The EPA inspection referenced in paragraph 20 above, revealed that Respondent's SWPPP failed to include the requirements contained in Part 10 of Respondent's permit. Specifically, the SWPPP did not provide for sediment control BMPs in numerous areas throughout the Site; did not address track-out of sediment onto public roadways; and did not require sedimentation basins in drainage areas with 10 or more disturbed acres.

42. Respondent's failure to develop an adequate SWPPP is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4**

**Failure to Properly Implement SWPPP**

43. The facts stated in paragraphs 11 through 20 above are herein incorporated.

44. Part 9 of the Requirements section of Respondent's permit requires that Respondent fully implement the provisions of the SWPPP throughout the term of the land disturbance project.

45. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to properly implement several elements of the SWPPP. Specifically, Respondent failed to properly implement SWPPP requirements for the installation of silt fencing, berms, and stabilized spillways, and failed to remove piling and other obstructions caused by construction operations from streams.

46. Respondent's failure to properly implement the SWPPP is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Count 5**

#### **Failure to Update and Amend SWPPP**

47. The facts stated in paragraphs 11 through 20 above are herein incorporated.

48. Part 11 of the Requirements section of Respondent's permit requires that the permittee shall update and amend the SWPPP (and fully implement the amended SWPPP, per Part 9 of the permit) as appropriate during the term of the land disturbance activity. The permittee is required to amend the SWPPP at a minimum whenever, *inter alia*, (a) the design, operation or maintenance of BMPs is changed.

49. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not amend the SWPPP to reflect actual Site conditions and BMPs in place at the time of the inspection.

50. Respondent's failure to update and amend its SWPPP is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Count 6**

#### **Failure to Comply with Narrative Water Quality Standards**

51. The facts stated in paragraphs 11 through 20 above are herein incorporated.

52. Part 3 of the Requirements section of Respondent's permit states that discharges shall not cause violations of the Water Quality Standards (10 C.S.R. 20-7.031(3)), which state, in part, that no water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting, *inter alia*, the following condition: waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity...and from physical...changes that would impair the natural biological community.

53. The EPA inspection referenced in paragraph 20 above, revealed increased turbidity in Hubble Creek due to large amounts of soil entering the creek along the top portion of the stream culvert.

54. Respondent's failure to comply with narrative water quality standards is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### Count 7

#### **Failure to Comply with Site Inspection Requirements**

55. The facts stated in paragraphs 11 through 20 above are herein incorporated.

56. Part 12 of the Requirements section of Respondent's permit requires that regularly scheduled inspections be performed at a minimum of once per seven calendar days. When a rainfall event causes stormwater runoff to occur onsite, Respondent shall inspect BMPs within 48 hours of the rainfall event. Respondent is required to note any problems observed during Site inspections and correct them within seven calendar days of the inspection, or, if correction is impossible in that timeframe due to weather conditions, file a detailed report including pictures.

57. The EPA inspection referenced in paragraph 20 above, revealed that Respondent repeatedly failed to conduct regularly scheduled inspections at the required frequency, and failed to inspect BMPs within 48 hours of a storm event in October 2008.

58. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to correct problems noted during Site inspections within seven days of the inspection, and, when weather conditions prevented correction within seven days, failed to file a detailed report with pictures. Specifically, the following timeframes were documented as having issues that were not corrected within seven days: April 29 – May 13, 2009; June 9 – 17, 2009; September 16 – 30, 2009; and October 7 – November 25, 2009.

59. Part 12 of the Requirements section of Respondent's permit requires that Respondent shall list in the inspection report all areas where land disturbance operations have permanently or temporarily ceased.

60. The EPA inspection referenced in paragraph 20 above, revealed that Respondent repeatedly failed to list in the inspection report areas where land disturbance operations had permanently or temporarily ceased. The site inspection reports before April 26, 2010, did not list any locations where stabilization occurred on areas where construction activity ceased temporarily or permanently.

61. Part 12 of the Requirements section of Respondent's permit requires that Respondent shall perform a documented inspection of the receiving stream for 50 feet downstream of each outfall.

62. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to document inspections of receiving streams.

63. Respondent's failure to comply with site inspection requirements is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Order For Compliance**

64. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 65 through 67.

65. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of Respondent's permit.

66. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

67. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

### **Submissions**

68. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Ms. Cynthia Sans  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

69. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

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

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

70. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

71. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

#### **Access and Requests for Information**

72. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect

Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

73. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

#### **Effective Date**

74. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

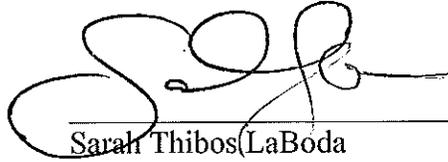
#### **Termination**

75. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 2<sup>ND</sup> day of September, 2010.



William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division



Sarah Thibos LaBoda  
Senior Assistant Regional Counsel  
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance 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 noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Stephen Bubanovich  
Resident Engineer  
Missouri Department of Transportation – District 10  
2910 Barron Road  
Poplar Bluff, Missouri 63901-1900.

Sent via first class mail to:

Mr. Kevin Mohammadi, Chief  
Water Pollution Control Program  
Missouri Dept. of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

and

Mr. Gary Gaines, Regional Director  
MDNR Southeast Regional Office  
2155 North Westwood Boulevard  
Poplar Bluff, Missouri 63901-2439.

9/2/10

Date

*Luah A. Moreno*