

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-07-2004-0235
Beaverbrooke Development Company)
4545 Merle Hay Road) FINDINGS OF VIOLATION,
Des Moines, Iowa 50310) 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 VII and further delegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

2. Respondent is Beaverbrooke Development Company, a company incorporated under the laws of Iowa and authorized to conduct business in the State of Iowa.

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 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.

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 storm water 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 storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 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.

9. 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 delegated states for violations of the CWA.

Factual Background

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

11. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Beaverbrooke West Plat 1 and 2, located northwest of James Street and 11th Street in Grimes, 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.

12. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and enters existing drainage ways and storm water sewers, draining to the northeast corner of the Site. The discharge then flows north in a roadside ditch on the west side of James Street, passing into a culvert beneath James Street. The storm water then flows east and then north across a farm field until it discharges into Little Beaver Creek. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

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

14. Respondent's storm water runoff from the Site is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

15. The Site is a "point source" which has caused and continues to cause the "discharge of pollutants" as defined by CWA Section 502, 33 U.S.C. § 1362.

16. Respondent discharged pollutants into drainage ways which drain into Little Beaver Creek, which is a tributary of Beaver Creek. Little Beaver Creek is a "navigable water" as defined by CWA Section 502, 33 U.S.C § 1362.

17. 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.

18. On April 14, 2004, 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

Count 1

FAILURE TO OBTAIN AN NPDES PERMIT PRIOR TO CONSTRUCTION

19. The facts stated in paragraphs 10 through 18 above are herein incorporated.

20. Respondent failed to obtain an NPDES permit authorizing the discharge of storm water prior to initiating construction at the Site in May 2001.

21. Following the inspection referenced in paragraph 18 above, Respondent applied for an NPDES storm water construction permit from IDNR for Beaverbrooke West Plats 1 and 2 on May 5, 2004 and received NPDES permit #7673-7479 on May 11, 2004.

22. Respondent's failure to obtain an NPDES permit prior to initiating construction is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p) and implementing regulations.

Count 2

DISCHARGE WITHOUT A PERMIT

23. The facts stated in paragraphs 10 through 18 above are herein incorporated.

24. Respondent undertook grading and construction activities that resulted in storm water runoff discharges without coverage of an NPDES permit for 36 months, from May 2001 through April 2004.

25. Rainfall records show that there were 47 precipitation events greater than 0.5 inches at or near the Site during the period from May 2001 through April 2004. Respondent discharged storm water runoff to Little Beaver Creek during each of these precipitation events.

26. Each of Respondent's discharges of storm water runoff to Little Beaver Creek, as described in paragraph 25 above, was an unpermitted discharge of pollutants from a point source to waters of the United States, in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p) and implementing regulations.

27. The EPA inspection referenced in paragraph 18 above found that Respondent failed to implement Best Management Practices that would have been required by an NPDES permit in order to minimize off-site migration of sediment. Specifically, the inspection referenced in paragraph 18 above revealed the following facts which are relevant to the nature, circumstances, extent, and gravity of Respondent's unpermitted discharges:

- a. Sediment track was observed in public right-of-ways.
- b. Storm water curb and gutter inlet protection was not provided, resulting in sediment accumulation in the James Street drainage ditch downstream of the Site.
- c. Erosion control measures were not provided on the south side of the Site and west of NW Norton Street.
- d. Silt fencing was inadequate or improperly maintained between the lots facing NW 11th Street and NW 12th Circle, resulting in unrestricted drainage into a nearby unprotected storm drain located on NW Norton.
- e. Earth, siltation and debris was allowed to collect from several concrete rinse-out or chute clean-out locations and wash onto private land.
- g. A Storm Water Pollution Prevention Plan (SWPPP) had not been developed for the Site.

Order For Compliance

28. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 29 through 31.

31. 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

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

Berla Jackson-Johnson
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, KS 66101

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

Joe Griffin
Storm Water Program Coordinator
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

34. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

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

Access and Requests for Information

36. Nothing in this Order shall limit the 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

37. 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

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

Termination

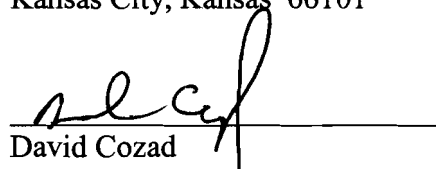
39. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

IN THE MATTER OF
Beaverbrooke Development Company
Docket No. CWA-07-2004-0236

Issued this 30th day of September, 2004.



Leo J. Alderman, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101



David Cozad
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

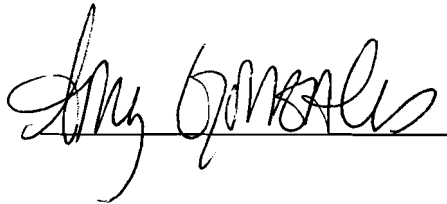
I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

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:

Beaverbrooke Development Company
c/o Charles Gabus Ford
Registered Agent, Charles H. Gabus
4545 Merle Hay Road
Des Moines, IA 50310

Joe Griffin
Iowa Department of Natural Resources
Wallace Building
502 E 9th Street
Des Moines, IA 50319-0034

10/5/04
Date



Amy Gonzalez