

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-07-2006-0266  
)  
Riefe's, Inc. )  
)  
Davenport, Iowa 52804 )  
)  
) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE  
)  
)  
Respondent )  
)  
)  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
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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 Riefe's, Inc., 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.

10. The IDNR issued a General Permit for the discharge of storm water under the NPDES, General Permit NO. 2 (“Permit”). The Permit became effective on October 1, 2002, and expires on October 1, 2007. The Permit governs storm water discharges associated with construction or land disturbance activity (e.g., clearing, excavating, grading, and other activity that results in the destruction of the root zone).

#### 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 Hidden Meadows First Addition located at the end of the existing Hidden Valley Drive, which is west of Wisconsin Avenue and south of Locust Street and at the end of West 11<sup>th</sup> Street, Davenport, Iowa (“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.

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows south into the unnamed perennial stream tributary to the perennial Blackhawk Creek to the Mississippi River. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

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

15. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

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(7), 33 U.S.C § 1362(7).

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 10 above. IDNR assigned Respondent Authorization Number IA-9919-9718, which was issued on August 9, 2005.

21. On April 19, 2006, contractors for 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 Respondent’s compliance with Sections 301 and 402 of the CWA.

### Findings of Violation

#### Count 1

##### **Failure to Develop an Adequate Storm Water Pollution Prevention Plan**

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

23. The General Permit, Part IV (Storm Water Pollution Prevention Plan), requires that a storm water pollution prevention plan (“SWPPP”) be developed and implemented either prior or concurrent with the initiation of construction activity and maintained throughout the period of coverage under the General Permit.

24. The General Permit, Part IV (Storm Water Pollution Prevention Plan), 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 maintain compliance with the requirements of the General Permit.

25. The inspection referenced in paragraph 21 above, revealed that Respondent did not develop and maintain an adequate SWPPP compliant with the General Permit, Part IV (Storm Water Pollution Prevention Plan) prior to or concurrent with the initiation of construction activity in September 2005, up to the present. Respondent's SWPPP failed to adequately address erosion or the discharge of sediment and other pollutants as required by the General Permit. The inspection in paragraph 21 above, documents that Respondent's inadequate SWPPP resulted in the migration of sediment in to the receiving water body.

26. Respondent's failure to develop an adequate SWPPP is a violation of Part IV (Storm Water Pollution Prevention Plan) 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 Install Adequate Best Management Practices**

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

28. Part IV.A. (Erosion and Sediment Controls) of Respondent's General Permit states that stabilization practices to ensure that existing vegetation is preserved and disturbed areas are stabilized, including temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation and other appropriate measures shall be initiated. Furthermore, structural practices shall divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site, and these practices may include silt fences, etc.

29. The inspection referenced in paragraph 21 above revealed that Respondent did not install appropriate structural practices or stabilization practices to prevent sediment movement for storm water to pass through prior to leaving the construction site in the following areas.

- a. Part IV.A(1). (Stabilization Practices) of the Respondent's General Permit states that where soil disturbing activities cease in an area for more than 21 days, the disturbed areas shall be protected from erosion by stabilizing the area with effective control Best Management Practices ("BMPs") as soon as practicable but no later than 14 days. At the time of inspection, soil disturbing activities had ceased on the Site for a minimum of 21 days, and Respondent failed to stabilize the Site with effective erosion control BMPs, resulting in erosion and sediment runoff at several locations, including but not limited to approximately 600 feet of hillside on the northside of lots six and nine and the west bank of the unnamed tributary just south of the stream crossing at the east end of Lot 12. At the time of inspection, these stabilization practices were not in place, resulting in erosion and sediment runoff.

- b. Respondent's Grading and Erosion Plan includes placement of silt fence radiating from Hidden Valley Drive both north and south from Lot 3 through 10 on the north side of Hidden Valley drive and Lots 12 through 15 on the south side of Hidden Valley Drive. Additionally, the west bank of the unnamed tributary just south of the stream crossing (east end of Lot 12) had been disturbed with no silt fence present and approximately 175 feet of silt fence needed. Approximately 50 feet of silt fence was needed at the top of the embankment south and east of the existing fence southeast of the stream crossing and approximately 110 feet of silt fence was needed at the top of the stream bank just north west of the stream crossing. At the time of inspection, these silt fences were not in place, resulting in erosion and sediment runoff.

30. 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 3

#### **Failure to Properly Design or Install Adequate Best Management Practices**

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

32. Part IV.A.2.a. of the Respondent's Permit requires a sediment basin providing 3,600 cubic feet of storage per acre drained from common drainage areas that serve more than 10 acres disturbed, or where not attainable silt fences, etc., are required for all sideslope and downslope boundaries of the construction area to prevent erosion and sediment runoff.

33. The inspection referenced in paragraph 21 above revealed that Respondent did not properly design or properly place a sediment basin or properly install silt fences in the drainage area to prevent erosion and sediment runoff. The silt fence was placed in a location where it diverted flow away from the sediment basin that was constructed resulting in migration of sediment into the perennial unnamed tributary.

34. Respondent's failure to properly design or install adequate best management practices 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).

### Order For Compliance

35. 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 36 through 38.

36. 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 the permit.

37. 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.

38. 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 fifteen (15) 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. The schedule for elimination of the violations shall be subject to EPA approval.

#### **Submissions**

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

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

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

Mr. Joe Griffin, Program Coordinator  
Storm Water Program  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034.

#### **General Provisions**

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

43. 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 based on the Findings of Fact and Findings of Violation set forth above or any other violation of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

44. 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 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**

45. 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**

46. 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.

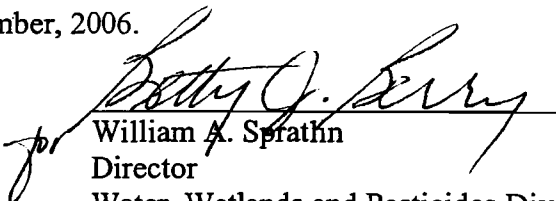
#### **Effective Date**

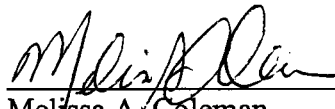
47. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

#### **Termination**

48. 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.

Issued this 22nd day of September, 2006.

  
for William A. Sprath  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101



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Melissa A. Coleman  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
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:

Riefe's, Inc.  
Registered Agent: Richard D. Riefe  
Contact: Dan Riefe  
1417 W. Locust Street  
Davenport, IA 52804.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class mail to:

Mr. Joe Griffin, Program Coordinator  
Storm Water Program  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034.

9/28/06  
Date

E. D. H. C. Watchett