

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2020-0120
Rollins Pass Development LLC,)	
)	COMPLAINT AND
Respondent)	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 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, Rollins Pass Development LLC, (“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) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent has violated Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

4. The authority to act under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Division Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Rollins Pass Development, LLC, is and was at all relevant times a limited liability company under the laws of the State of Iowa and authorized to do business in Iowa.

Statutory and Regulatory Framework

6. 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 provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. 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.

8. 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 requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

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

10. 40 C.F.R. §§122.26(a)(1)(ii) and 122.26(c) require discharges of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. 40 C.F.R. § 122.26 (b)(14)(x) defines “stormwater discharge associated with industrial activity,” in part, as discharges from construction activity including clearing, grading and excavation, except operation that result in the disturbance of less than five acres of total land area, or the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

12. 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. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The IDNR has issued General Permit No. 2, which is a multi-sector permit that authorizes stormwater discharges associated with construction activity. The effective date of the General Permit is March 1, 2018, and expires February 28, 2023.

Factual Allegations

14. Respondent is and was at the times relevant to this action the owner and/or operator of a facility known as the Lindemann Subdivision Part 8, located in the SW ¼ Section 7, Township 79 North, Range 5 West, Johnson County, Iowa (“Facility”). Construction activities occurred at the Facility beginning around November 2018, including clearing, grading, and excavation activities on approximately 20 acres.

15. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's Facility and discharge into an unnamed tributary of Ralston Creek, into Ralston Creek, and ultimately discharging into the Iowa River.

16. The runoff and drainage from Respondent's Facility are "stormwater" as defined by 40 C.F.R. § 122.26(b)(13). Stormwater from the Facility contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Facility 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).

18. The Iowa River, Ralston Creek, and its unnamed tributary, as identified above are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. Stormwater runoff from Respondent's industrial activity results in the addition of pollutants from a point source to a water of the U.S., and thus is the "discharge of a pollutant," as defined by CWA Section 502(12), 33 U.S.C. § 1362(7).

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 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. At all times relevant to this action, Respondent's Facility has been subject to the referenced General Permit No. 2 ("General Permit"). After receipt of a Notice of Intent from Respondent, IDNR issued Authorization No. 32511-32221 on March 23, 2018 through March 23, 2021.

22. Respondent has operated under the General Permit at all times relevant to this Order.

23. Respondent developed a Stormwater Pollution Prevention Plan ("SWPPP") for the Facility dated April 1, 2018.

24. On or about April 10, 2019, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its General Permit and the CWA.

25. During the Inspection, the EPA inspector reviewed Respondent's records related to the General Permit and observed the Facility and the unnamed tributary to Ralston Creek to which the stormwater is discharged.

26. At the conclusion of the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation identifying potential violations of Respondent's General Permit, specifically the failure to install adequate stormwater controls at a number of inlets, inadequate silt fencing at several locations, and failure to have available a signed SWPPP.

27. On April 15 and 18, 2019, Respondent responded the Notice of Potential Violation. Based on the information Respondent provided, it appears that the violations were corrected following the inspection.

FINDINGS OF VIOLATION

Count 1: Failure to Install Best Management Practices

28. The allegations stated above are realleged and incorporated herein by reference.

29. Part III.C. of Respondent's General permit requires that Respondent design and install effective erosion controls and sediment controls to minimize the discharge of pollutants. Section 2.1 and 2.2 of Respondent's SWPPP requires adequate silt fencing and inlet protection devices to be installed.

30. Part IV.D.2.A.(2).(a) of Respondent's General Permit requires upon disturbance of 10 acres or more either installation of a sediment basin and/or if it is determined the sedimentation basin is not attainable, adequate silt fencing.

31. Part III.C.3. of Respondent's General Permit and Section 2.1 of Respondent's SWPPP requires the stabilization of disturbed areas to, at a minimum, be installed immediately whenever clearing, grading excavating, or other earth disturbing activities have temporarily ceased on any portion of the site not to resume for a period exceeding 14 days.

32. Section 2.3 of the SWPPP requires that Respondent to cover and/or stabilize excavation material stockpiles as soon as possible.

33. During the April 10, 2019 Inspection, the inspector observed Respondent had failed to install a sedimentation basin and/or adequate and effective silt fencing at several locations. Respondent failed to install stormwater inlet protection devices at several locations. In addition, site stabilization in several locations and soil stockpile stabilization were not appropriately implemented.

34. Based on the observations and information collected during the Inspection and subsequent record review, it is determined that the Respondent failed to install adequate stormwater controls. Respondent's failure to install adequate stormwater controls as required by the General Permit and SWPPP is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

Count II: Failure to Maintain Best Management Practices

35. The allegations stated above are herein incorporated by reference.

36. Part III.C. of Respondent's General permit requires that Respondent maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. Section 2.1 and

2.2 of Respondent's SWPPP requires adequate silt fencing and inlet protection devices to be properly maintained.

37. Section 3 of Respondent's SWPPP requires that each control structure shall be maintained in an operable condition through the life of the project until final stabilization has been achieved.

38. Based on observations and information collected during the Inspection, Respondent failed to maintain control structures at the Facility. The EPA inspector specifically observed improperly maintained silt fences at several locations bordering the unnamed tributary to Ralston Creek and Lower West Branch Road.

39. Respondent's failure to maintain stormwater control structures as required by the General Permit and SWPPP is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

Count III: Failure to Conduct Stormwater Inspections

40. The allegations state above are herein incorporated by reference.

41. Part IV.D.4. of Respondent's General Permit requires qualified personnel to inspect the disturbed areas of the Facility at least once every seven calendar days. Section 3 of Respondent's SWPPP requires regular inspections of all stormwater controls and disturbed areas at least once every seven calendar days and prepare a report of such inspection.

42. At the time of the Inspection, Respondent did not have inspection records between at least November 2018 through January 31, 2019. Respondent only had monthly inspection records for the months of February and March of 2019.

43. Respondent's failure to conduct the regular stormwater inspections as required by its General Permit and SWPPP is a violation of Section 404(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

CONSENT AGREEMENT

44. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

45. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

46. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

47. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

48. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/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.

49. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

50. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent' 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/Final Order.

51. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with NPDES General Permit No. 2, Permit Authorization No. 32511-32221, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

Penalty Payment

1. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Twenty-five Thousand Five Hundred Dollars (\$25,500)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

2. The payment of penalties must reference docket number CWA-07-2020-0120 and be remitted using one of the payment methods specified in Appendix A to this Order.

3. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Melissa Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

5. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any 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 or interest.

Effect of Settlement and Reservation of Rights

6. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

8. Nothing contained in this Consent Agreement/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.

9. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/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.

10. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

11. The Parties acknowledge that this Consent Agreement/Final Order is subject to the 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.

12. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All

time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

13. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

14. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

15. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

COMPLAINANT:
U.S. Environmental Protection Agency Region 7

DAVID COZAD Digitally signed by DAVID
COZAD
Date: 2020.06.23 10:11:50
-05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

JAMES Digitally signed by JAMES
BREDLOVE
BREDLOVE Date: 2020.06.22 11:27:15
-05'00'

Melissa Bagley
Assistant Regional Counsel
Office of Regional Counsel

FOR RESPONDENT:
Rollins Pass Development LLC



Rollins Pass Development LLC

3/23/20

Date

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

KARINA BORROMEIO Digitally signed by KARINA BORROMEIO
Date: 2020.07.22 15:09:07 -05'00'

Date

CERTIFICATE OF SERVICE

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

Copy via Email to Complainant:

bagley.melissa@epa.gov.

Copy Mailed to Respondent:


C. Joseph Holland, Registered Agent
123 N. Linn Street, Suite 300
Iowa City, Iowa 52245

and

Rollins Pass Development LLC
215 N. Linn Street
Iowa City, Iowa 52240

Dated this 23rd day of July, 2020.



 Lisa Haugen
Regional Hearing Clerk