

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-07-2007-0053
)
Mr. Leon Davis d/b/a)
Davis Auto Wrecking & Sales)
27403 E. Flynn Road)
Independence, Missouri 64057) 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 VII and further delegated to the Director of Region VII's Water, Wetlands and Pesticides Division.

2. Respondent is Mr. Leon Davis, d/b/a Davis Auto Wrecking & Sales, an individual registered to conduct business 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, 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, 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.

6. Pursuant to Section 402(p) of the CWA, 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)(vi) defines “storm water discharge associated with industrial activity”, in part, as “facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

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. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R60A on May 30, 2003. The permit governs storm water discharges associated with motor vehicle salvage yards and scrap metal recycling operations.

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 automobile junkyard or salvage yard known as Davis Auto Wrecking & Sales, located at 27403 E. Flynn Road, Independence, Missouri (the Site) with SIC codes of 5015 and 5093.

13. Storm water during heavy rainfalls leaves Respondent’s facility and flows into the West Fire Prairie Creek. 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. The Site has “storm water 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. Storm water runoff from Respondent’s 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)(vi), 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 No. MO-R60A0013, which was issued on June 6, 2003.

20. On April 10, 2007, 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 Prevent and Contain Spills

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

22. Paragraph 5 of the Requirements section of Respondent’s permit requires that spill prevention, control, and/or management shall be provided sufficient to prevent any spills of pollutants from entering a water of the state.

23. The inspection referenced in paragraph 20 above revealed discoloration and evidence of spills under oil tanks and piles of improperly stored engines, transmissions, and other dismantled parts.

24. Respondent's failure to prevent and contain spills is a violation of Respondent's 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), and implementing regulations.

Count 2

Failure to Conduct Employee Training

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

26. Paragraph 2 of the Requirements section of the Respondent's permit states that all involved personnel shall be provided training by the owner in material handling and storage, and housekeeping of dismantling, repair, rebuilding, or storage areas. Proof of training shall be submitted on request.

27. The inspection referenced in paragraph 20 above, revealed that Respondent failed to maintain records of employee training.

28. Respondent's failure to properly train employees is a violation of Respondent's 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), and implementing regulations.

Order For Compliance

29. Based on the Factual Background 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 30 through 32.

30. 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 violation cited above, and to come into compliance with all of the applicable requirements of the permit, including but not limited to the following items:

- a) Ensure that spill prevention, control, and/or management be provided to prevent spills of pollutants from entering waters of the state, including groundwater, as required by the General Permit, paragraph 5;
- b) Ensure that all involved personnel are provided training in material handling and storage, as required by the General Permit, paragraph 2.

31. 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.

32. 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

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

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

34. 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 Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

35. 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.

36. 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 Section 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

37. 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

38. 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.

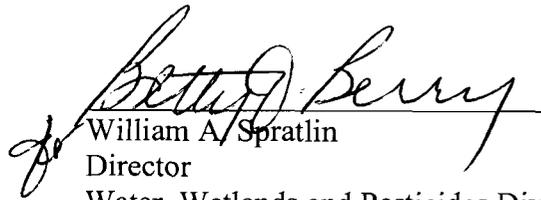
Effective Date

39. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region VII.

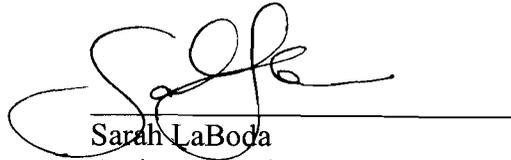
Termination

40. 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 21st day of June, 2007.



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



Sarah LaBoda
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 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. Leon Davis
Davis Auto Wrecking & Sales
27403 E. Flynn Road
Independence, Missouri 64057.

And via first class mail to:

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

Mr. Karl Fett
Missouri Dept. of Natural Resources
Kansas City Regional Office
500 NE Colbern Rd
Lee's Summit, Missouri 64086-4710.

6/26/07
Date

Kathy Lowman
Sender