



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

June 16, 2009

REPLY TO THE ATTENTION OF
E-19J

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**REGIONAL HEARING CLERK
USEPA
REGION 5**

Honorable Susan L. Biro, Chief ALJ
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: **Charles D. Sharp & Associates, Inc., d/b/a Sharp
Homes, Hunter's Ridge Development**
 Docket No.: **CWA-05-2009-0006**
 Complaint Date: **May 13, 2009**
 Total Proposed Penalty: **\$140,000.00**

Dear Judge Biro:

Enclosed herewith is a copy of the Answer for Charles D. Sharp & Associates, Inc., d/b/a Sharp Homes, Hunter's Ridge Development.

I am requesting an Administrative Law Judge be assigned to conduct this case matter.

Should you have questions or need any additional information, please contact me at (312) 886-3617.

Sincerely,

La Dawn Whitehead
Regional Hearing Clerk

Enclosures

cc: Richard R. Elledge, Esquire
 GOULD & RAATNER LLP
 222 North LaSalle Street
 Suite 800
 Chicago, Illinois 60601
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June 16, 2009

VIA HAND DELIVERY

Ms. LaDawn Whitehead
United States Environmental Protection Agency
Region 5
Office of Regional Counsel
77 W. Jackson Boulevard (E-19-J)
Chicago, IL 60604-3590

Re: Charles D. Sharp & Associates, Inc.
Docket No. CWA-05-2009-0006

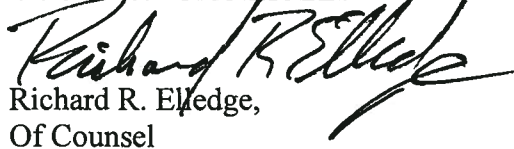
Dear Ms. Whitehead:

Enclosed herewith is a copy of the Answer, filed today with the Regional Docket Clerk, Region 5, USEPA.

Please feel free to contact me with any questions.

Very truly yours,

GOULD & RATNER LLP


Richard R. Elledge,
Of Counsel

RRE/hm

Enclosure

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PROTECTION AGENCY.



Hunter's Ridge construction Site in Joliet, Illinois. Sharp Homes denies all other allegations of Paragraph 11.

12. Sharp Homes admits the allegations of Paragraph 12.
13. Sharp Homes admits that as of November 20, 2007 portions of the Site have been cleared and graded and homes had been constructed on 10 of the lots. Sharp Homes denies all other allegations of Paragraph 13.
14. Sharp Homes denies the allegations of Paragraph 14.
15. Sharp Homes admits that storm water flowing over the Site reports to certain Settling Ponds that discharge into a drainage ditch that flows into a tributary of Aux Sable Creek.
16. Sharp Homes admits that Aux Sable Creek is a permanently flowing tributary to the Illinois River and that the current definition set out in 40 C.F.R. §122.2 would characterize it as "waters of the United States" but denies that Aux Sable Creek is navigable in fact and denies all other allegations of Paragraph 16.
17. Sharp Homes admits that the IEPA issued NPDES Permit No. ILR10C404 to Respondent effective on March 17, 2005 under the authority of the Illinois Environmental Protection Act and that the Permit establishes certain conditions governing the discharge of storm water from its construction and denies all other allegations of Paragraph 17.
18. Sharp Homes admits that Part IV.A. of the Permit requires it to comply with all conditions of the Permit, and denies all other allegations of Paragraph 18.

IV. VIOLATIONS

Count I – Failure to Comply with Permit Condition: Erosion and Sediment Controls

19. As an answer to Paragraphs 1 through 18, Sharp Homes incorporates its answers, above, to those paragraphs.
20. Sharp Homes admits the allegations of Paragraph 20.
21. Sharp Homes admits the allegations of Paragraph 21.

22. Sharp Homes admits that Paragraph 22 correctly quotes certain language of the permit.
23. Sharp Homes admits that the SWPPP describes permanent seeding as a allowable stabilization practice and denies that construction activity had ceased during the period from November 20, 2007 and March 20, 2008 (the "Relevant Period").
24. Sharp Homes denies that construction activity had temporarily ceased on the Site during the Relevant Period, and admits all other allegations of Paragraph 24.
25. Sharp Homes admits that certain language of the Permit is correctly quoted in Paragraph 25.
26. Sharp Homes admits that paragraph 2 of the SWPPP describes certain controls to be employed at the Site, including "silt filter fence" and "barrier filter" and denies the remaining allegations of Paragraph 26.
27. Sharp Homes has insufficient information with which to determine the number of locations identified in the SWPPP at which straw bale barriers were missing during the Relevant Period and requires strict proof thereof.
28. Sharp Homes has insufficient information with which to determine how many feet of silt fence, if any, may be required by the SWPPP at the location indicated in Paragraph 28 and requires strict proof thereof.
29. Sharp Homes denies of the allegations of Paragraph 29.

Count II – Failure to Comply with Permit Condition; Improper Operation and Maintenance

30. Sharp Homes incorporates its answers to Paragraphs 1 through 18 above in answer to Paragraph 30.
31. Sharp Homes admits that certain language of the Permit is correctly quoted in Paragraph 31.
32. Sharp Homes admits the allegations of Paragraph 32

33. Sharp Homes admits that, at the time of the inspections identified in Paragraph 33 certain silt fencing had sustained damage, not yet repaired, and that certain of the straw bails barriers used as inlet protection were not in strict compliance with the NRCS Standard Drawings reproduced in the SWPPP.
34. Sharp Homes denies the allegations of Paragraph 34.

Count III – Failure to Comply with Permit Condition: Violations of Water Quality Standards

35. Sharp Homes incorporates its answers to Paragraphs 1 through 18, above, in answer to Paragraph 35.
36. Sharp Homes admits the allegations of Paragraph 36.
37. Sharp Homes admits the allegations of Paragraph 37.
38. Sharp Homes admits that EPA conducted an inspection of the Site on November 20, 2007 and denies the remaining allegations of Paragraph 38.
39. Sharp Homes admits that EPA conducted an inspection of the Site on June 3, 2008 and denies the remaining allegations of Paragraph 39.
40. Sharp Homes denies the allegations of Paragraph 40.

Count IV – Failure to Inspect

41. Sharp Homes incorporates its answers to Paragraphs 1 through 18, above, and answer to Paragraph 41.
42. Sharp Homes admits the allegations of Paragraph 42.
43. Sharp Homes admits the allegations of Paragraph 43.
44. Sharp Homes denies the allegations of Paragraph 44.

Count V - Failure to Keep Inspection Records

45. Sharp Homes incorporates its answers to Paragraphs 1 through 18, above, in answer to Paragraph 45.

46. Sharp Homes admits the allegations of Paragraph 46.

47. Sharp Homes admits the allegations of Paragraph 47.

48. Sharp Homes admits the allegations of Paragraph 48.

49. Sharp Homes denies the allegations of Paragraph 49.

Count VI – Failure to Meet Signatory Requirements

50. Sharp Homes incorporates its answers to Paragraphs 1 through 18, above, in answer to Paragraph 50.

51. Sharp Homes admits the allegations of Paragraph 51.

52. Sharp Homes admits the allegations of Paragraph 52.

53. Sharp Homes admits the allegations of Paragraph 53.

54. Sharp Homes admits the allegations of Paragraph 54.

55. Sharp Homes admits the allegations of Paragraph 55.

56. Sharp Homes admits the allegations of Paragraph 56.

57. Sharp Homes denies the allegations of Paragraph 57.

Count VII – Failure to Keep Plans Current

58. Sharp Homes incorporates its answers to Paragraphs 1 through 18, above, in answer to Paragraph 58.

59. Sharp Homes admits that certain language of the Permit is accurately quoted in Paragraph 59.

60. Sharp Homes admits the allegations of the first sentence of Paragraph 60, and denies the allegations of the second sentence of Paragraph 60.

61. Sharp Homes denies the allegations of Paragraph 61.

V. PROPOSED PENALTY

Without conceding the validity of the USEPA and U.S. Army Corps of Engineers Guidance Memorandum dated December 3, 2008 following the U.S. Supreme Court's Decision in *Rapanos v. United States of America* and *Carabell v. United States of America*, or conceding the authority of USEPA to enforce the provisions of Illinois Permit No. ILR10C404 or conceding the jurisdiction of USEPA under The Clean Water Act with regard to discharges from the Site into a drainage ditch that flows into a tributary of Aux Sable Creek, Sharp Homes avers:

1. No penalty is warranted with regard to the allegations of Count III, Paragraphs 35 through 40, since the erroneous inferences stated in Paragraphs 38 or 39 do not establish any violation of applicable water quality standards set out in 35 Ill. Adm. Code 302.

2. To the extent that the Administrator may establish any of the violations of the Permit alleged in Counts I, II, IV, V, VI or VII, the following provisions of 33 U.S.C. § 1319(g)(3) are applicable in this instance:

(a) In the circumstances of the home construction industry during the relevant period, generally, and the impact of market conditions on Sharp Homes, specifically, during the relevant period, any such violations would be of minor to moderate gravity;

(b) The ability of Sharp Homes to pay any penalty is seriously curtailed;

- (c) Sharp Homes has no prior history of violations of the Clean Water Act or of the Illinois Environmental Protection Act;
- (d) Given the circumstances in which Sharp Homes found itself during the Relevant Period, and the resulting reduction in forces during the first half of 2007 that those circumstances compelled, the culpability of Sharp Homes is slight;
- (e) Sharp Homes incurred substantial expenses for the corrective action taken in response to the Compliance Order issued by USEPA on April 30, 2008, and obtained no economic benefit as a result of the timing of its corrective actions.

Respectfully submitted,

CHARLES D. SHARP & ASSOCIATES, INC.,
Respondent

By Richard R. Elledge
one of its attorneys

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PROOF OF SERVICE

The undersigned certifies that the foregoing Answer to the Administrative Complaint in this proceeding was served on the Regional Administrator of Region 5, USEPA by mailing a copy thereof to John Tielsch, Associate Regional Counsel, 77 West Jackson Boulevard (Mail Code C-29A), Chicago, Illinois on this 15th day of June 2009.


Richard R. Elledge

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