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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
Steve Stinnett)	
D.B.A.Town & Country Village/Grundaker)	Docket No. CWA 07-2005-217
3237A East Sunshine)	
Springfield, Missouri)	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 Steve Stinnett, D.B.A.Town & Country Village/Grundaker.

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), the 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 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, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR issued a Missouri State Operating Permit to Respondent for the discharge of storm water associated with industrial activity for construction activities, Permit No. MO-R109B82 (“Permit”). The Permit was issued on March 23, 2004, and is scheduled to expire on March 7, 2007. The General Permit governs storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, 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).

Ozark, Missouri, at 2455 Jackson Street. 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/or runoff water leaves Respondent's facility by an unnamed tributaries and flows into Finley 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. 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 was a "point source" which caused the "discharge of pollutants" as defined by CWA Section 502, 33 U.S.C. § 1362.

17. Respondent discharged pollutants into tributaries of Finley Creek, a "navigable water" as defined by CWA Section 502, 33 U.S.C § 1362. The designated uses for Finley Creek are livestock and wildlife watering, fish consumption, cool water fishery, whole body contact recreation and boating and canoeing.

18. 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.

19. Respondent applied for and was issued NPDES permit coverage under the Permit described in paragraph 10 above. MDNR assigned Respondent Permit No. MO-R109B82 that was issued on March 23, 2004, and is scheduled to expire on March 7, 2007.

20. On October 19, 2004, the 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.

21. A November 29, 2004, MDNR inspection of the Site identified continued violations.

Findings of Violation

Count I

Failure to Have an Adequate Storm Water Pollution Prevention Plan ("SWPPP")

22. The facts stated in paragraphs 11 through 21 above are herein incorporated.
23. Respondent's Permit establishes, among other things, requirements regarding the construction of sedimentation basins. Specifically, the Permit states that the SWPPP shall require a sedimentation basin for each drainage area with 10 or more acres disturbed at one time.
24. Respondent's development is greater than 10 acres and drainage is predominantly to the southeast corner of the site. Respondent's SWPPP is not adequate because the SWPPP failed to specify that a sedimentation basin is required in the southeast corner of the site because more than 10 disturbed acres drain to that location.
25. During the October 19, 2004, inspection, EPA inspectors observed the offsite migration of a significant amount of sediment from the Site at the southeast corner of the Site. The inspectors observed severe erosion and down-cutting at that location. The accumulation of golfball to softball sized rocks in this tributary to Finley Creek demonstrates that storm water runoff moves through this area with sufficient competence and capacity to carry not only sediment but also rocks of significant size. There was a notable lack of sediment in this area because it had been carried downstream toward Finley Creek.
26. Respondent's Permit requires that the permittee shall ensure the land disturbance site is inspected on a regular schedule and within a reasonable time period (not to exceed 72 hours) following heavy rains and that regularly scheduled inspections shall be at a minimum of once per week. The Permit further specifies that inspection reports shall kept.
27. Respondent's SWPPP failed to specify that all disturbed areas of the construction site that have not been stabilized shall be inspected at a minimum once per week and within a reasonable time period (not to exceed 72 hours) following heavy rains. The SWPPP failed to specify report keeping requirements.
28. The inadequacies of the Site's SWPPP resulted in a discharge of pollutants to a tributary of Finley Creek, a "navigable water" as defined by CWA Section 502, 33 U.S.C § 1362.
29. Respondent's failure to draft an adequate SWPPP is a violation of its Permit, and as such, is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342.

Count 2

Failure to Implement the SWPPP and Best Management Practices (“BMPs”)

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

31. A sedimentation basin is a BMP required by the Respondent’s Permit to control erosion and limit sediment transport to waters of the U.S. Respondent’s Permit specifies that a sedimentation basin shall be required for each drainage area with 10 or more acres disturbed at one time.

32. At the time of the October 19, 2004, inspection, EPA inspectors observed that approximately 35 acres were disturbed, that this 35 acres made up a single drainage area, and that the Site did not contain a sedimentation basin as required by Respondent’s Permit.

33. Respondent’s Permit states that stabilization measures to control erosion and sediment shall be initiated on all disturbed areas where soil disturbing activities cease in an area for more than 14 days. The Permit further states that stabilization measures to control erosion and sediment shall be initiated on all disturbed areas where soil disturbing activities cease in an area for more than 7 days if there is a significant slope.

34. During the October 19, 2004, inspection, EPA inspectors observed that a majority of the Site was disturbed and only sporadic vegetation was present. Inspectors observed that Respondent had failed to implement stabilization measures at the Site despite, based on statements made by the Respondent and observations of the maturity of the vegetation that was present on disturbed areas, a significant period of time had passed since the last activity had occurred at the disturbed area of the Site.

35. During the October 19, 2004, inspection, for a majority of the disturbed areas at the site the only stabilization measures observed was silt fence. Significant sections of the silt fence were ineffective because of a lack of maintenance or improper installation. The silt fence in many areas was inundated with soil and therefore was not an impediment to sediment laden storm water runoff.

36. Respondent’s SWPPP specifies the proper installation of silt fences and other BMPs. Respondent failed to install significant portions of the silt fences and other BMPs at the site in accordance with the requirements of the SWPPP.

37. During the October 19, 2004, inspection, EPA inspectors observed the offsite migration of a significant amount of sediment from the Site. The inspectors observed the accumulation of sediment within tributaries to Finley Creek. EPA inspectors also observed the

offsite migration of a significant amount of sediment from the Site at the southeast corner of the Site. The inspectors observed severe erosion and down-cutting at that location. The accumulation of golfball to softball sized rocks in this tributary to Finley Creek demonstrates that storm water runoff moves through this area with sufficient competence and capacity to not only carry sediment but also rocks of significant size. There was a notable lack of sediment in this area because it had been carried downstream toward Finley Creek.

38. Respondent's failure to implement its SWPPP and install appropriate stabilization measures to control erosion and sediment is a violation of Respondent's General Permit, and as such, is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342.

Count 3

Failure to Maintain Records of Inspections

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

40. Respondent's Permit requires that all disturbed areas of the construction site that have not been stabilized shall be inspected at a minimum once per week and within a reasonable time period (not to exceed 72 hours) following heavy rains. The Permit also requires that a weekly inspection report shall be prepared.

41. At the time of the October 19, 2004, inspection, Representatives of the Respondent stated that there were no records of inspections conducted at the Site.

42. Respondent's failure to maintain records is a violation of its SWPPP and its General Permit, and as such, is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342.

Order for Compliance

43. 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 below.

44. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to remedy the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of Respondent's Permit. The corrective action that is necessary shall include, but not be limited to, installing stabilization practices and installing appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site.

45. Within thirty (30) days of the effective date of this Order, Respondent shall amend the SWPPP for the Site to adequately address the requirements of Respondent's Permit.

46. 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.

47. 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

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

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

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

49. 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.

50. 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. Violation of this Order by Respondent may result in a penalty of up to \$32,500 per day per violation. Issuance of this Order shall not be deemed an election by EPA to forego 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

51. 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

52. 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.

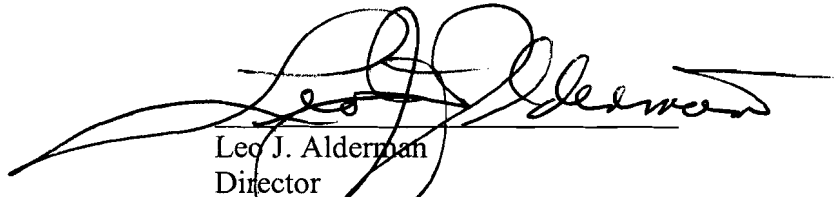
Effective Date

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

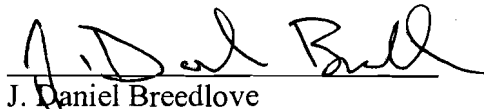
Termination

54. 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 14th day of April, 2005.



Leo J. Alderman
Director
Water, Wetlands and Pesticides Division



J. Daniel Breedlove
Assistant Regional Counsel

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:

Steve Stinnett
D.B.A.Town & Country Village/Grundaker
3237A East Sunshine
Springfield, Missouri 65804

Kevin Mohammadi
Chief, Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Kevin Hess
Missouri Department of Natural resources
2040 West Woodland
Springfield, Missouri 65807-5912

4/15/05
Date

E. D. H. C. W. H. C. H. H. H.