

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 )  
)  
)  
Davis Homes, Inc. )  
1700 Sophie Dr. )  
Smithville, MO 64089 )  
)  
Respondent )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
\_\_\_\_\_ )

Docket No. CWA-07-2006-0115

FINDINGS OF VIOLATION,  
ORDER FOR COMPLIANCE

**I. 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, Davis Homes, Inc., (hereinafter “Respondent” or “Davis Homes”) is a corporation registered under the laws of the State of Missouri and authorized to conduct business in the State of Missouri with its principal office at headquarters located at 1700 Sophie Dr., Smithville, Missouri.

**II. 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. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122 which sets forth minimum requirements for NPDES permits. Further, EPA promulgated regulations codified at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for storm water discharges.

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. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA pursuant to Sections 309(g) and 402 (i) of the CWA, 33 U.S.C. §§ 1319(g) and 1342(i).

10. The MDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R107137. This General Permit became effective on February 8, 2002, and expires on February 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).

### **III. Findings of Fact**

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 Millen Subdivision, Phase I, Lots 4A and 4b (“Site”) located near Stark Avenue and Northeast 126 Street, Clay County, Missouri. 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 goes into Fishing River and an unnamed tributary of Fishing 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. 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 an unnamed tributary to Fishing River. The unnamed tributaries and Fishing River are "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

17. 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).

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 General Permit described in paragraph 10 above. MDNR assigned Respondent permit number MO-R107137, which was issued on February 8, 2005.

20. On January 24, 2006, EPA inspectors 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.

#### **IV. Findings of Violation**

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

#### **Count 1**

#### **Failure to Install Appropriate Best Management Practices (BMPs)**

22. Part 8(e) of the Requirements and Guidelines section of Respondent's permit states that peripheral or border BMPs to control runoff from disturbed areas shall be installed or marked for preservation before general site clearing is started.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not install peripheral or border BMPs to control runoff from disturbed areas.

24. Part 8(d) of the Requirements and Guidelines section of Respondent's permit states that where soil disturbing activities cease in an area for more than 14 days, the disturbed areas shall be protected from erosion by stabilizing the area with mulch or other similarly effective erosion control BMP.

25. The inspection of January 24, 2006, referenced in paragraph 20 above, revealed that Respondent failed to stabilize areas where soil disturbing activity had ceased for more than 14 days.

26. 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 2**

#### **Unauthorized Discharges to Waters of the U.S.**

27. Respondent's Application to the State of Missouri for a permit pursuant to Section of 402 of the CWA and state law, 10 CSR 20-6.010(5), applied to Lots 4A and 4B in Millen Subdivision.

28. Respondent caused storm water runoff to Lots 6, 7, 8, and 9 discharging pollutants to an unnamed tributary to Fishing River.

29. Respondent's discharges are unauthorized discharges and therefore are violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

### **Count 3**

#### **Failure to Conduct Site Inspections**

30. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. After heavy rains, inspections of land disturbance site are to take place within seventy-two (72) hours. In addition, Part 10 requires that any deficiencies be noted in a report and corrected within seven (7) calendar days of the inspection. Further, Part 10 requires that Respondent notify site contractors responsible for operation and maintenance of BMPs of deficiencies noted during inspections, and notify each contractor of the existence of the SWPPP as well as the actions or precautions to be taken to minimize erosion potential. Further, Respondent is to keep the report at a site which is readily available from the permitted site.

31. Respondent did not perform documented site inspections at a minimum of once per week or within seventy-two (72) hours of heavy rainfall, note deficiencies in a report, correct the deficiencies within seven (7) calendar days of the inspection, notify site contractors of deficiencies or the existence of the SWPPP, nor keep the report at a site which is readily available from the permitted site.

32. Respondent's failure to perform and document site inspections 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 4**

#### **Failure to Develop and Implement a SWPPP**

33. Part 8 of the Requirements and Guidelines section of Respondent's permit states that the SWPPP is to contain a site description, address drainage areas, describe BMPs to be used at the site, define slopes for disturbed areas, and describe the measures that will be installed during land disturbance to control pollutants in storm water discharges that will occur after land disturbance activity has been completed.

34. The EPA inspection referenced in paragraph 20 above, revealed that the SWPPP did not address the requirements contained in paragraph 8 of Respondent's permit.

35. Respondent's failure to develop and implement an adequate SWPPP 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).

#### **V. Order For Compliance**

36. 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 38 through 45 and comply with remaining provisions.

37. Immediately upon receipt of this Order, Respondent shall comply with Section 402 of the Clean Water Act by immediately applying for a permit with the State of Missouri for all lots being developed in Millen's Plat, except Lots 4a and 4b, already covered by the General Permit, MO-R107137, which was issued on February 8, 2005.

38. Within thirty (30) days of the effective date of this Order, Respondent shall install peripheral or border BMPs to control runoff from disturbed areas and stabilize areas where soil disturbing activity had ceased for more than fourteen (14) days.

39. Within thirty (30) days of the effective date of this Order, Respondent shall develop and implement an adequate SWPPP.

40. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever other 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.

41. Within thirty (30) days of the effective date of this Order, 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.

42. 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**

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

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

44. 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**

45. 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.

46. 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 of the Act, 33 U.S.C. § 1319, 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**

47. 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**

48. 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**

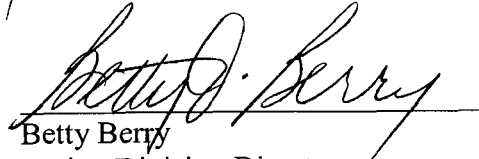
49. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

### **Termination**

50. 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.

*In the matter of  
Davis Homes, Inc.  
Findings of Violation, Order for Compliance*

Issued this 24th day of February, 2006.



Betty Berry  
Acting Division Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101



Denise Roberts  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101



*In the matter of  
Davis Homes, Inc.  
Findings of Violation, Order for Compliance*

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.

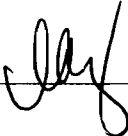
I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Richard L. Davis  
Registered Agent for Davis Homes, Inc.  
1700 Sophie Dr.  
Smithville, Missouri 64089

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

Mr. Karl Fett  
Missouri Department of Natural Resources  
500 N.E. Colbern Rd.  
Lee's Summit, Missouri 64086-4710.

2/28/04  
Date

  
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