



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 7, 901 North 5th Street, Kansas City, Kansas 66101

FINDINGS OF VIOLATIONS and ORDER FOR COMPLIANCE

Docket Number: **CWA-07-2008-0034**

NPDES Permit No.: **MO-R109BH7**

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

STATUTORY AUTHORITY

The following FINDINGS are made, and ORDER issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Sections 308(a) and 309(a) of the Clean Water Act (herein the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 7, who has further delegated this authority to the Director of the Water, Wetlands, and Pesticides Division.

FINDINGS

1. **Pointe Development, L.L.C.** (herein the "Respondent") is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. Attached is an "Findings of Alleged Violations Worksheet" (herein the "Form"), which is hereby incorporated by reference. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

3. At all times relevant to this Order, Respondent owned or operated the facility described in the Form (herein "the facility"), and for which was legally organized as described on the Form.

4. At all times relevant to this Order, the facility was a "point source" of a "discharge" of "pollutant[s]" in and with its storm water discharges to the receiving waters of "waters of the United States" within the meaning of § 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2. As a result, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under § 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402 of the Act, 33 U.S.C. § 1342. The Missouri Department of Natural Resources, (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to § 402 of the Act. EPA maintains concurrent authority with delegated states for violations of the Act.

7. Under 40 C.F.R. § 122.26(b)(14), the "storm water discharge associated with industrial activity" includes, among other things, storm water discharge from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of one or more acres of total land area. These

regulations also set forth the permit application requirements for storm water discharges.

8. Pursuant to Section 402(p) of the Act, MDNR issued a General Permit for the discharge of storm water under the NPDES Permit No. MO-R109 (the General Permit). The General Permit became effective on March 8, 2007 and expires on March 7, 2012.

9. Respondent applied for and was issued a permit coverage under the General Permit described above. MDNR issued permit MO-R109BH7 on October 12, 2007, which expires on March 7, 2012.

10. At all times relevant to this action, the facility was involved in construction activities including clearing, grading, and excavation. The approximate number of acres for the common plan is documented on the Form.

11. The facility was conducting construction activities as described in the Form, which continued throughout the time period relevant to this action.

12. Each person that meets the definition of "owner" or "operator", and engages in construction subject to the NPDES program and defined by 40 CFR § 122.26(b)(14)(x) or 40 CFR § 122.26(b)(15), must apply for and obtain an individual permit or seek coverage under a promulgated storm water general permit before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

13. At all times relevant to this action, Respondent was an "owner" or "operator" within the meaning of 40 C.F.R. § 122.2 and the permit, and was therefore required to obtain NPDES permit coverage for its construction activities at the facility.

14. The facility was inspected as documented on the Form. As a result of this inspection, the facility was found to be in violation of its NPDES permit.

15. If so documented in the Form, each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these Findings and pursuant to the authority of §§ 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and

1319(a), EPA HEREBY ORDERS Respondent to take the following action:

A. Within thirty (30) days of the effective date of this Order, Respondent shall develop and implement a Storm Water Pollution Prevention Plan (distinct from a grading or grading/erosion plan), in accordance with the permit requirements and applicable from the commencement of the construction activity until final stabilization occurs.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written plan of action to

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judicial action, Respondent will be subject to civil penalties of up to \$32,500 per day per violation.

If a criminal action is initiated by U.S. Department of Justice, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, Respondent may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remains in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the U.S. Department of Justice. If the United States initiates a civil