

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Charles D. Sharp & Associates, Inc.,)
d/b/a/ Sharp Homes, Hunter's Ridge)
Development)
)
Respondent)
)
_____)

Consent Agreement and Final Order

RECEIVED
FEB 05 2010

REGIONAL HEARING CLERK
USEPA
REGION 5

Docket No.: CWA-05-2010-0005

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5, and Respondent, Charles D. Sharp & Associates, Inc., ("Respondent"), have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* found at 40 C.F.R. §§ 22.13(b) and 22.18(b). Respondent consents to the entry of this Consent Agreement and Final Order ("CAFO").

PRELIMINARY STATEMENT

1. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

2. Respondent is a “person” as that term is defined at Section 502(5) of the CWA, 33 U.S.C. §1362(5), and 40 C.F.R. § 122.2.

STATUTORY AND REGULATORY BACKGROUND

3. To restore and maintain the integrity of the nation’s water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific terms and conditions.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires that any storm water discharge associated with industrial activity must comply with the requirements of an NPDES permit.

6. As authorized by Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA has issued regulations defining requirements for NPDES permits for storm water discharges. The

regulations include those codified at 40 C.F.R. Part 122.

7. “Storm water discharge associated with industrial activity” includes discharges associated with “construction activity including clearing, grading, and excavation” activities resulting in the disturbance of at least five acres or more of total land area. *See* 40 C.F.R. § 122.26(b)(14)(x).

8. 40 C.F.R. § 122.2 defines “discharge of a pollutant” to include any addition of any pollutant to waters of the United States from any point source.

9. “Pollutants” includes “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” *See* 40 C.F.R. § 122.2.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

11. 40 C.F.R. § 122.2 defines “waters of the United States” to include tributaries of waters that “may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.”

12. 40 C.F.R. § 122.2 defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

13. The State of Illinois (“the State”), through its Environmental Protection Agency (IEPA), is a state approved under the CWA to issue and administer NPDES permits in Illinois.

14. Dischargers of storm water associated with industrial activity are required to apply

for an individual permit or seek coverage under a promulgated storm water general permit. *See* 40 C.F.R. § 122.26(c).

15. Under the general permitting program, the State issues a general permit covering large categories of dischargers who generally do not need individual permits. *See* 40 C.F.R. § 122.28.

16. 40 C.F.R. § 122.28 allows discharges from storm water point sources to be regulated by general permits.

17. On October 23, 1977, U.S. EPA delegated its authority to issue permits under the NPDES to IEPA, allowing it to issue permits under the NPDES. This delegation has been modified from time to time since then. U.S. EPA retains authority to enforce the CWA in Illinois, including enforcing the conditions of permits issued under the NPDES by IEPA.

18. On May 31, 2003, pursuant to the NPDES, IEPA issued general permit number ILR10 covering Storm Water Discharges from Construction Site Activities requiring the development of stormwater management plans implementing management practices to control sediments associated with construction site activities.

19. Under the authority of Section 402(b) of the Act, 33 U.S.C. § 1342(b), and the Illinois Environmental Protection Act the IEPA issued NPDES Permit No. ILR10C404 to Respondent effective on March 17, 2005 (“the Permit”). NPDES Permit No. ILR10C404 establishes certain conditions governing the discharge of storm water from Respondent’s construction Site.

20. Part VI. A. of the Permit requires Respondent to comply with all conditions of the Permit. Noncompliance is grounds for an enforcement action under the (CWA).

ALLEGATIONS

21. Respondent at all times relevant to this CAFO has owned and operated a construction site located in Joliet, Illinois. This site is known as the Sharp Homes Hunter's Ridge Development in Joliet, Illinois (hereinafter, "the Site" or "Site").

22. Respondent's construction activity at the Site commenced on or about February 2006 and Respondent has cleared, graded and/or excavated more than five acres.

23. As of November 20, 2007, the entire Site had been cleared and graded, homes had been constructed on ten of 140 lots, and all construction had temporarily ceased.

24. As of March 20, 2008, no construction on the Site had occurred since November 20, 2007.

25. Respondent's construction activity has resulted in discharges of storm water via storm sewers, surface water run off and discharge pipes to a perennial stream which is a tributary to the East Aux Sable Creek, a permanently flowing tributary to Aux Sable Creek.

26. Aux Sable Creek is a permanently flowing tributary to the Illinois River and other surface waters, all of which are "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2.

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

27. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

28. Part IV. of the Permit requires Respondent to develop a storm water pollution prevention plan ("SWPPP") and to implement its provisions as a condition of the Permit.

29. Respondent developed a SWPPP for the Site in 2006 which includes a description of controls as required by Part IV. D. of the Permit.

30. Permit No. ILR10C404, Part IV.D.2. a. (i), Stabilization Practices, provides that “Except as provided in paragraphs (A) and (B) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. (A) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable. (B) Where construction activity will resume on a portion of the site within 21 days from when activities ceased (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of the site by the 14th day after construction activity temporarily ceased.” Additionally, Part IV.D.2.(a)(i) states that “Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.”

31. Respondent’s SWPPP, paragraph 2 describes permanent seeding as one of the stabilization practices, at a minimum, to be initiated within 14 days where construction activity has temporarily ceased or as soon as practicable where precluded by snow cover.

32. No permanent seeding described in the SWPPP was initiated on approximately 13 acres of the Site within 14 days after construction activity temporarily ceased , or as soon as practicable after reduction of snow cover.

33. Permit No. ILR10C404, Part IV.D.2.a.(ii), Structural Practices, states that “A description of practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock drainage protection, reinforced soil retaining systems, gabions, and temporary or permanent basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.”

34. Respondent’s SWPPP, paragraph 2 describes “silt filter fence” and “barrier filter” as controls to be implemented and provides descriptions of the plans and locations for the “silt fence” and “inlet protection straw bale barrier”.

35. From November 20, 2007, to at least March 20, 2008, Respondent failed to install inlet protection straw bale barriers at 154 locations identified in the SWPPP.

36. From November 20, 2007, to at least March 20, 2008, Respondent failed to install 540 feet of silt fence required by the SWPPP to run across the southwest corner of the Site.

37. Respondent’s failure to comply with Part IV.D.2 a.(i) and (ii) of its Permit constitutes violations of Section 301 of the Act, 33 U.S.C. § 1311 and of part IV.D.2a.(i) and (ii) of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

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

38. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

39. Part VI. P. of the Permit requires that “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit and with the requirements of the SWPPP.”

40. The SWPPP, paragraph 3, operation and maintenance states: “The following is a description of procedures that will be used to maintain, in good and effective operating conditions, vegetation, erosion and sediment control measures and other protective measures identified in this plan and standard specifications...Silt Filter Fence: The damaged silt fence shall be restored to meet the standards or removed and replaced as needed.” “Temporary sediment fence...shall be maintained throughout the construction period...”“The straw bale barrier filter shall be inspected frequently and shall be repaired and removed and replaced as needed.” The straw bale barrier plans in the SWPPP are in accordance with the Illinois Urban Manual showing specifics for embedding and anchoring the bales in the soil and indicate where bales were to be used for inlet protection.

41. At the time of the inspections on November 20, 2007, and March 20, 2008, and June 3, 2008, damaged silt fencing on the western, northern and southern portions of the Site was not restored or removed and replaced and the straw bales on site for barrier inlet protection on June 3, 2008, were not installed in accordance with the plans provided in the SWPPP.

42. Respondent’s failure to comply with Part VI. P. of its Permit constitutes violations of Section 301 of the Act, 33 U.S.C. § 1311 and of Part VI. P. of the Permit, which is a condition of

a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

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

43. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

44. Permit No. ILR10C404, Part III.C requires that discharges covered by the permit, alone or in combination with other sources, shall not cause or contribute to a violation of any applicable water quality standard outlined in 35 Ill. Adm. Code 302.

45. 35 Ill. Adm. Code 302 states, in part, that there shall be no sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f)(2004), 35 Ill. Adm. Code 302.203 (General use water quality standards).

46. On November 20, 2007, EPA conducted an inspection of the Site. The inspector observed that the Site discharges to a tributary to the East Aux Sable Creek and has discharged pollutants into the tributary in the past as evidenced by the large amount of sediment observed in the outfall pipe located in the northern portion of the Site.

47. On June 3, 2008, an EPA inspection of the Site found that the receiving stream in the area of lot 134 contained bottom deposits of other than natural origin.

48. Respondent's discharges constitute violations of Section 301 of the Act, 33 U.S.C. § 1311 and of Part III. C. of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize

the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count IV – Failure to Inspect

49. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

50. Permit No. ILR10C404 Part IV.D.4., Inspections, requires that “Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater or equivalent snowfall.”

51. On June 3, 2008, EPA conducted an inspection of the Site and found the Respondent had not performed any inspections between the November 20, 2007 EPA inspection and at least May 29, 2008.

52. Respondent’s failure to inspect the Site every seven days and within 24 hours of the end of a storm that is 0.5 inches or greater constitutes violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Part IV.D.4. of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count V – Failure to Keep Inspection Records

53. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

54. Permit No. ILR10C404, Part IV.D.4.(c), Inspections, requires that “A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP and the actions taken...shall be made and retained as part of the SWPPP for at least three years from the date of that the permit coverage expires or is terminated.”

55. Permit No. ILR10C404, Part V.A., Retention of Records, requires that “The permittee shall retain copies of the SWPPP and all reports and notices required by this Permit, and records of all data used to complete the Notice of Intent to be covered by this Permit, for a period of time of at least three years from the date that the permit coverage expires or is terminated.”

56. On June 3, 2008, EPA conducted an inspection of the Site and found that the Respondent did not retain any records of inspections between February 2006 and November 20, 2007.

57. Respondent’s failure to retain inspection records constitutes violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Part IV.D.4c and V.A. of the Permit, which are conditions of a permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count VI – Failure to Meet Signatory Requirements

58. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

59. Permit No. ILR10C404, Part VI.G.2, Signatory Requirements, requires that “All reports required by the permit and other information requested by the Agency shall be signed by a person described above (in Part VI.G.1.) or by a duly authorized representative of that person.”

60. Permit No. ILR10C404, Part VI.G.2.d, Signatory Requirements Certification, requires that “Any person signing documents under this Part shall make the following certification...”

61. Permit No. ILR10C404, Part IV.B.1, Signature, Plan Review and Notification, requires that “The plan shall be signed in accordance with Part VI.G...”

62. Permit No. ILR10C404, Part IV.F., Contractors, requires that, “All contractors...must sign a copy of the following certification statement below (in Part IV.F.3.) in accordance with Part VI.G. of this permit.”

63. On June 3, 2008, EPA conducted an inspection of the Site and found that the Respondent did not have the proper certification as required by Part VI.G.1 and 2 of the Permit.

64. On June 3, 2008, EPA conducted an inspection of the Site and found that the certification statement in the plan was not signed by the contractors as required by Part IV.F of the Permit.

65. Respondent’s failure to meet signatory requirements constitutes violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Parts IV.G.2 and IV.F. of the Permit, which are conditions of a permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil

penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count VII – Failure to Keep Plans Current

66. Paragraphs 1 through 26 are re-alleged here as if set forth in full.

67. Permit No. ILR10, Part IV.C., Keeping Plans Current, requires that “The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the Waters of the State and which has not otherwise been addressed in the plan or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under paragraph D.2. below, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction site activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the SWPPP.”

68. On June 3, 2008, EPA conducted an inspection of the Site and observed that the SWPPP was not amended to show the location of a soil stock pile and silt fence surrounding it on the southwest portion of the Site. This change in construction has a significant effect on the potential for the discharge of pollutants to the Waters of the State and is not otherwise addressed in the SWPPP.

69. Respondent’s failure to amend the SWPPP constitutes violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Part IV.C. of the Permit, which is a condition of a permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations

consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C.

TERMS OF SETTLEMENT

70. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA and Respondent agree to settle this matter for \$15,000.

71. For the purposes of this proceeding, and pursuant to 40 C.F.R. § 22.18(b) and (c), Respondent: (1) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; and (2) neither admits nor denies the facts alleged in this CAFO; and (3) expressly denies any liability for violations of the laws and regulations cited in this CAFO.

72. Upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

73. Respondent must pay the \$15,000.00 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 60 days after the effective date of this CAFO.

74. Respondent must send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

75. This civil penalty is not deductible for federal tax purposes.

76. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk
Planning and Management Division (R-13J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

John Tielsch
Associate Regional Counsel
Office of Regional Counsel (C-14J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Felicia Chase
Water Division (WC-15J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

77. Respondent's failure to pay the assessed civil penalty in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall

not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondent shall also be required to pay attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of each such quarter.

78. Notwithstanding any other provision of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

79. Respondent agrees to comply with the requirements of the CWA during its construction activities.

OTHER MATTERS

80. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

81. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes.

82. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it.

83. Each party agrees to bear its own costs accrued in the course of this action.

84. Pursuant to 40 C.F.R. § 22.38, by letter dated December 19, 2008, the State was notified of this proceeding.


85. The effective date of this CAFO is the date that the CAFO is filed in the office of

the Regional Hearing Clerk, after having been signed by the Regional Administrator or his designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. 1319(g)(4)(C).

86. This CAFO constitutes the entire agreement between the parties.


**United States Environmental Protection Agency, Region 5,
Complainant**

Date Feb 2, 2010

By: 
Tinka G. Hyde
Director, Water Division
EPA, Region 5

**Charles D. Sharp & Associates, Inc.
Respondent**

Date 18 Jan 2010

By: 

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Charles D. Sharp & Associates, Inc.
Docket No.
CWA-05-2010-0005

FINAL ORDER

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: _____
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

Dated: _____