

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )

MISSOURI DEPARTMENT )  
OF TRANSPORTATION )

Respondent )

Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )

) Docket No. CWA-07-2010-0126

) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE

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 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the Missouri Department of Transportation (“MoDOT”), a state agency responsible for designing, building, operating and maintaining the transportation system in the State of Missouri.

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 stormwater. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of stormwater 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), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater 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 stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “stormwater 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 states for violations of the CWA.

10. The MDNR issued a General Permit for the discharge of stormwater under the NPDES, Permit No. MO-R100XXX. This General Permit became effective on May 31, 2007, and expires on May 31, 2012. The General Permit governs stormwater 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 and/or land disturbance activity that is reasonably certain to cause pollution to waters of the state) that are performed by or under contract to a city, county, or other governmental jurisdiction that has a stormwater control program and/or stormwater pollution prevention plan (“SWPPP”) for land disturbance activities that has been approved by MDNR.

#### Factual Background

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 US 54 Expressway ("Site") located approximately between Grand Glaize Bridge and El Terra Road, in Osage Beach, 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. Stormwater, snow melt, surface drainage, and runoff water from Respondent's facility goes into Lake of the Ozarks and unnamed tributaries leading to Lake of the Ozarks. The runoff and drainage from Respondent's facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

14. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Site has "stormwater 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 "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

17. Stormwater 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-R100007 for "various [projects] throughout the state," which was issued on June 15, 2007.

20. On May 17-19, 2010, 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 management of stormwater at the site in accordance with the CWA.

Findings of Violation

Count 1

**Failure to Maintain Best Management Practices (BMPs)**

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.
22. Part 13 of the Requirements section of Respondent's permit requires that the Respondent shall at all times maintain all pollution control measures and systems in good order to achieve compliance with the terms of the General Permit.
23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained silt fencing. Specifically, numerous silt fences throughout the site were undermined, breached, overrun, or filled with sediment.
24. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained rock check dams. Specifically, a rock check dam in Focus Area 1 was degraded and breached.
25. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained sedimentation basins. Specifically, the sedimentation basin in Focus Area 2 was filled with accumulated sediment and was breached. The dams of both of the sedimentation basins in Focus Area 6 were breached.
26. Part 10(l) of the Requirements section of Respondent's permit states that all efforts should be made to prevent the deposition of earth and sediment onto roadways through the use of proper BMPs.
27. At the time of the EPA inspection referenced in paragraph 20 above, vehicle track-out was observed on Case Road in Focus Area 4.
28. Respondent's failure to properly maintain its pollution control measures and good housekeeping practices is a violation of Respondent's General Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 2**

**Failure to Install Adequate BMPs**

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

30. Part 10(j) of the Requirements section of Respondent's permit requires that sedimentation basins shall be sized to contain a volume of at least 3600 cubic feet per each disturbed acre draining thereto.

31. The EPA inspection referenced in paragraph 20 above, revealed that basins in Focus Areas 2 and 4 were not adequately sized for the drainage area.

32. Part 10(h) of the Requirements 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.

33. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to stabilize areas where soil disturbing activity had ceased for more than 14 days in Focus Area 3.

34. Respondent's failure to select, install, use, operate, and maintain appropriate BMPs is a violation of Respondent's General Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3**

**Failure to Develop an Adequate Stormwater Pollution Prevention Plan ("SWPPP")**

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

36. Part 10 of the Respondent's permit requires that the Stormwater Pollution Prevention Plan ("SWPPP") include, *inter alia*, the following items:

- j. The SWPPP shall require a sedimentation basin for each drainage area with 10 or more acres disturbed at one time. The sedimentation basin shall be sized to contain a volume of at least 3600 cubic feet per each disturbed area draining thereto.

37. The EPA inspection, referenced in paragraph 20 above, revealed that the Respondent's SWPPP failed to include the requirements contained in Part 10 of Respondent's permit. Specifically, the SWPPP did not provide for adequately sized sedimentation basins for each drainage area with 10 or more acres disturbed at one time.

38. Respondent's failure to develop an adequate SWPPP is a violation of Respondent's General Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Count 4**

##### **Failure to Properly Implement SWPPP**

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

40. Part 9 of the Requirements and Guidelines section of Respondent's permit requires that Respondent fully implement the provisions of the SWPPP throughout the term of the land disturbance project.

41. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to properly implement several elements of the SWPPP. Specifically, Respondent failed to properly implement SWPPP requirements for the installation of silt fencing, temporary berms, and rock dams throughout the Site.

42. Respondent's failure to implement the SWPPP is a violation of Respondent's General Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Count 5**

##### **Failure to Update and Amend SWPPP**

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

44. Part 11 of the Requirements section of Respondent's permit requires that the permittee shall update and amend the SWPPP (and fully implement the amended SWPPP, per Part 9 of the permit) as appropriate during the terms of the land disturbance activity. The permittee shall amend the SWPPP at a minimum whenever, *inter alia*, (a) the design, operation, or maintenance of BMPs is changed.

45. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not amend the SWPPP to reflect actual Site conditions and BMPs in place at the time of the inspection.

46. Respondent's failure to update and amend the SWPPP is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### Count 6

#### **Failure to Comply with Narrative Water Quality Standards**

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

48. Part 3 of the Requirements section of Respondent's permit states that discharges shall not cause violations of the Water Quality Standards (10 C.S.R. 20-7.031(3)), which states, in part, that no water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting, *inter alia*, the following condition: waters shall be free from substances in sufficient amounts to cause: the formation of...unsightly or harmful bottom deposits...or unsightly color or turbidity.

49. The EPA inspection referenced in paragraph 20 above, revealed increased turbidity in Focus Areas 1, 2, and 4; and debris from the sedimentation basin was observed in the receiving waters including the Lake of the Ozarks.

50. Respondent's failure to comply with narrative water quality standards is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### Count 7

#### **Failure to Perform and Document Site Inspections**

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

52. Part 12 of the Requirements section of Respondent's permit requires that regularly scheduled documented inspections be performed at a minimum of once per seven calendar days. In addition, it requires that any problems be noted in a report and corrected within seven calendar days of the inspection.

53. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not perform documented Site inspections at a minimum of once per week for each week during active land disturbance. Specifically, documented inspections for the weeks of October 30, November 16, February 1, February 22, and March 29 were not performed.

54. 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), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Order For Compliance**

55. 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 56 through 58.

56. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever 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 Respondent's permit, *including but not limited to*, revision of the SWPPP to include adequately-sized sedimentation basins (or equivalent BMPs) for each drainage area greater than 10 acres and full implementation of the BMPs specified in the SWPPP.

57. 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.

58. 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**

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

Ms. Cynthia Sans  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

60. 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 Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

61. 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.

62. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309 of the CWA, 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 CWA for any violation whatsoever.

#### **Access and Requests for Information**

63. 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**

64. 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.

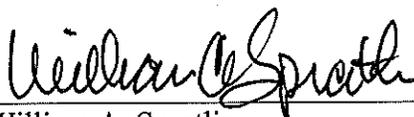
**Effective Date**

65. 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.

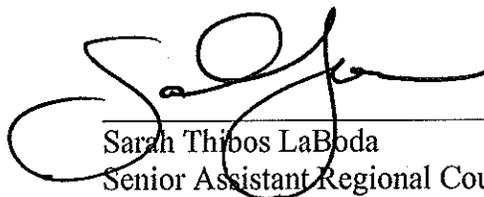
**Termination**

66. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 2<sup>ND</sup> day of September, 2010.



William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division



Sarah Thibos LaBoda  
Senior Assistant Regional Counsel  
Office of 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:

Mr. Joshua Kincaid  
Assistant Resident Engineer  
Missouri Department of Transportation - Central District  
1511 Missouri Boulevard  
P.O. Box 718  
Jefferson City, Missouri 65102

Mr. Michael O'Malley  
Resident Engineer  
Missouri Department of Transportation - Central District  
1511 Missouri Boulevard  
P.O. Box 718  
Jefferson City, Missouri 65102

Sent via first class mail to:

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

Cindy Davies, Regional Director  
MDNR Southwest Regional Office  
2040 West Woodland  
Springfield, Missouri 65807-5912

9/2/10  
Date

Jarah A. Moreno