

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)
)
) Docket No. CWA-07-2007-0024
Missouri Partners, Inc.)
800 Highway 248, Building #3) FINDINGS OF VIOLATION,
Branson, Missouri 65616) 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 Missouri Partners, Inc., a company registered under the laws of Missouri and authorized to conduct business 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 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), 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. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R109. This General Permit became effective on March 8, 2002, expired March 7, 2007, and was renewed on March 8, 2007. 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) and discharges associated with construction or land disturbance activity near valuable resource waters.

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 Terrell Creek (“Site”) located near County Line Road and Highway ZZ, Ozark, 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 Terrell Creek, a tributary of the James 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 "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-R109H68, which was issued on June 15, 2005 for Phase 1A & 1B; permit number MO-R109L74, which was issued on September 29, 2005 and renewed on October 23, 2006 for Terrell Creek Boulevard; and permit number MO-R109S25 which was issued on July 14, 2006 and renewed on October 26, 2006 for Phase 1.

20. On September 27, 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.

Findings of Violation

Count 1

Failure to Develop an Adequate SWPPP

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

22. Part 7 of the Requirements and Guidelines section of Respondent's permit states that the primary requirement of this permit is the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) that: a) incorporates permit requirements; b) incorporates

erosion control practices specific to site conditions; and c) provides for maintenance and adherence to the plan.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not have an adequate SWPPP prepared and available on site.

24. Respondent's failure to develop an adequate SWPPP and keep the SWPPP on site 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

Failure to Perform and Document Site Inspections

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

26. 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 and within a reasonable time period (not to exceed 72 hours) following heavy rains. In addition, it requires that any deficiencies be noted in a report and corrected within seven calendar days of the inspection.

27. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week from July 14, 2006 to the date of the inspection.

28. 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 3

Failure to Maintain Best Management Practices

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

30. Part 11 of the Requirements and Guidelines 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.

31. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained rock check dams on site.

32. Respondent's failure to properly maintain its pollution control measures 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).

Order For Compliance

33. 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 34 through 36.

34. 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 the permit including, but not limited to, the following items:

- a) Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) to be kept on site that: a) incorporates all permit requirements; b) incorporates erosion control practices specific to site conditions; and c) provides for maintenance and adherence to the plan. Additionally, the SWPPP shall be amended and updated as required by the general permit;
- b) Perform documented site inspections at a minimum of once per week. All deficiencies identified during such inspection shall be noted in a report containing the minimum information required by the general permit, and corrected within seven calendar days of the inspection; and
- c) Maintain all pollution control measures and systems on site in good and working order.

35. 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.

36. 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

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

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

38. 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

39. 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.

40. 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

41. 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

42. 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.

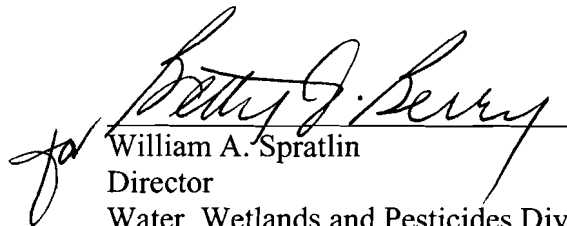
Effective Date

43. 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.

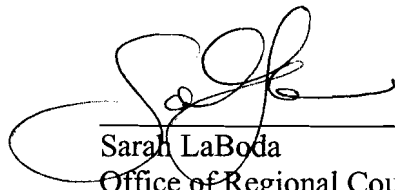
Termination

44. 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 5th day of April, 2007.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency



Sarah LaBoda
Office of Regional Counsel
U.S. Environmental Protection Agency

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. Bill Briggs
Project Manager
Missouri Partners, Inc.
800 Highway 248, Building #3
Branson, Missouri 65616

Moira Darst
Registered Agent for Missouri Partners, Inc.
Manchester Village Building III
800 State Highway 248
Branson, Missouri 65616

And via first class 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

Ms. Cindy Davies, Director
Missouri Dept. of Natural Resources
Southwest Regional Office
2040 W. Woodland
Springfield, Missouri 65807

4/6/07

Date

Kathy Rouman