

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)
)
)
Ward Development & Investment Co.)
620 North Outer Road)
Grain Valley, Missouri 64029)
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
)

Docket No. CWA-07-2005-0397

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

2. Respondent is Ward Development & Investment Co., 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. MOR101-R108. This General Permit became effective on February 8, 2002, and expires on February 7, 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).

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 Woodbury Villas located at the southwest corner of Duncan Road and Hedgewood Drive, Grain Valley, Missouri (“Villas”). Construction activities occurred at the Villas 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. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Woodbury Plat II located near Duncan Road and Woodbury Lane, Grain Valley, Missouri (“Plat II”). Construction activities occurred at Plat II 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.

14. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Woodbury Plat III located between Woodbury Drive and Cedar Lane, Grain Valley, Missouri ("Plat III"). Construction activities occurred at Plat III 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.

15. At all times relevant to this action, Respondent was the owner and/or operator of construction sites known as Woodbury Future Plats located south and west of Plat III, Grain Valley, Missouri ("Future Plats"). Construction activities occurred at the Future Plats 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.

16. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes into Swiney Branch and an unnamed tributary of Swiney Branch. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

18. The Site has "storm water discharge 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).

19. Respondent discharged pollutants into Swiney Branch and an unnamed tributary of Swiney Branch. The unnamed tributary and Swiney Branch are "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

20. 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).

21. 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.

22. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 10 above. MDNR assigned Respondent permit number MO-R106111, which was issued on January 23, 2004 for the Villas; and permit number MO-R105176, which was issued on March 7, 2003 for Plat II.

23. On April 4, 2005, EPA inspectors performed an inspection of the Villas, Plat II, Plat III, and Future Plats under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate compliance with the requirements of the CWA.

Findings of Violation

Count 1

Failure to Install Appropriate Best Management Practices

24. The facts stated in paragraphs 11 through 23 above are herein incorporated.

25. 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.

26. The inspection referenced in paragraph 23 above, revealed that Respondent failed to stabilize areas in the Villas where soil disturbing activity had ceased for more than 14 days.

27. Part 8(e) of the Requirements and Guidelines section of Respondent's permit states that storm water runoff from disturbed areas which leave the site boundary shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the land disturbance site.

28. At the time of the EPA inspection referenced in paragraph 23 above, Respondent had not installed sediment impediment mechanisms to protect storm drain inlets at the Villas.

29. At the time of the EPA inspection referenced in paragraph 23 above, Respondent had not installed sediment impediment mechanisms to protect storm drain inlets at Plat II.

30. At the time of the EPA inspection referenced in paragraph 23 above, there was no sedimentation basin at the Villas.

31. At the time of the EPA inspection referenced in paragraph 23 above, there was no sedimentation basin at Plat II.

32. Part 7(a) of the Requirements and Guidelines section of Respondent's permit requires that Respondent select, use, operate, and maintain BMPs in accordance with EPA guidance document, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," which provides that "excess concrete and wash water should be disposed of in a manner that prevents contact between these materials and storm water which will be discharged from the site."

33. The EPA inspection referenced in paragraph 23 above revealed that several concrete wash out areas at the Villas and Plat II lacked adequate controls to prevent contact between the concrete wash out and storm water runoff.

34. Part 2 of the Requirements and Guidelines section of Respondent's permit states that good housekeeping practices shall be maintained on the site to keep solid waste from entry into the waters of the state. The EPA guidance document, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices" further defines good housekeeping practices to include the cleanup of sediments that have been tracked by vehicles onto roadways.

35. At the time of the EPA inspection referenced in paragraph 23 above, significant vehicle track-out was observed on streets at the Villas.

36. At the time of the EPA inspection referenced in paragraph 23 above, significant vehicle track-out was observed on streets at Plat II.

37. 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

Failure to Maintain Best Management Practices

38. The facts stated in paragraphs 11 through 23 above are herein incorporated.

39. 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.

40. The inspection referenced in paragraph 23 above, revealed that Respondent had not adequately maintained silt fencing located at the Villas.

41. 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).

Count 3

Failure to Perform and Document Site Inspections

42. The facts stated in paragraphs 11 through 23 above are herein incorporated.

43. 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.

44. The inspection referenced in paragraph 23 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week at the Villas.

45. The inspection referenced in paragraph 23 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week at Plat II.

46. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed within a reasonable time period (not to exceed 72 hours) following heavy rains.

47. The inspection referenced in paragraph 23 above, revealed that Respondent did not perform documented inspections in response to heavy rain events at the Villas.

48. The inspection referenced in paragraph 23 above, revealed that Respondent did not perform documented inspections in response to heavy rain events at Plat II.

49. 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 Obtain a Permit

50. The facts stated in paragraphs 11 through 23 above are herein incorporated

51. Part 1 of the Applicability section of Respondent's permit states that any owner/operator of a site that will disturb one (1) or more acres and who disturbs land prior to permit issuance from MDNR is in violation of State and Federal law.

52. The inspection referenced in paragraph 23 above, revealed that Respondent commenced construction and land disturbance activities at Plat III prior to obtaining authorization.

53. The inspection referenced in paragraph 23 above, revealed that Respondent commenced construction and land disturbance activities at the Future Plats prior to obtaining authorization.

54. Respondent's failure to obtain a permit before commencing land disturbing activities resulted in an unauthorized discharge of stormwater without a 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 5

Failure to Develop an Adequate SWPPP

55. The facts stated in paragraphs 11 through 23 above are herein incorporated.

56. Part 8 of the Requirements and Guidelines section of Respondent's permit requires in part that the storm water pollution prevention plan ("SWPPP") include, *inter alia*, the following items:

- 8(h) Sedimentation Basins: The SWPPP shall require a sedimentation basin for each drainage area with ten (10) or more acres disturbed at one time.
- 8(i) Additional Site Management BMPs: The SWPPP shall address other BMPs, as required by site activities, to prevent contamination of storm water runoff.
- 8(j) Permanent Stormwater Management: The SWPPP shall include a description of 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.

57. The inspection referenced in paragraph 23 above, revealed that the SWPPP for the Villas did not address the requirements contained in paragraphs 8(h), 8(i), and 8(j) of Respondent's permit.

58. The inspection referenced in paragraph 23 above, revealed that the SWPPP for Plat II did not address the requirements contained in paragraphs 8(h), 8(i), and 8(j) of Respondent's permit.

59. Respondent's failure to develop 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).

Order For Compliance

60. 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 61 through 63.

61. 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.

62. 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.

63. 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

64. 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 VII
901 North Fifth Street
Kansas City, Kansas 66101.

65. 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

66. 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.

67. 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

68. 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

69. 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.

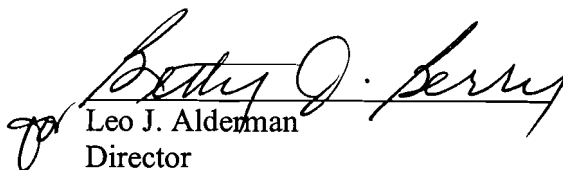
Effective Date

70. 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

71. 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 3rd day of October, 2005.



Leo J. Alderman

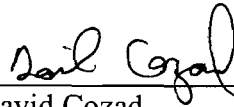
Director

Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency, Region VII

901 North Fifth Street

Kansas City, Kansas 66101



David Cozad

Office of Regional Counsel

U.S. Environmental Protection Agency, Region VII

901 North Fifth Street

Kansas City, Kansas 66101

DAVID L. WARD

Registered Agent for Ward Development & Investment Co.
620 North Outer Road
Grain Valley, Missouri 64029.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by 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.

10/5/05

Date

A handwritten signature in black ink, appearing to read "Ward", is written over a horizontal line.