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CWA Public Notice - South Park Development, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In accordance with Section 309(g)(4)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), notice is hereby given that a Consent Agreement/Final Order (CAFO) is proposed with South Park Development, LLC (Respondent), a company incorporated under the laws of the state of Kansas. The CAFO addresses alleged violations of the CWA at the Jackson Heights development site, located just east of the intersection of Tonganoxie Road and Parallel Road in Tonganoxie, Kansas.

Under the CWA, the Environmental Protection Agency (EPA) is authorized to issue orders assessing civil penalties for various violations of the CWA. EPA may issue such orders after beginning either a Class I or Class II penalty proceeding. EPA provides notice of the proposed assessment of a Class II civil penalty pursuant to Section 309 of the CWA. Class II proceedings are conducted under EPA's consolidated Rules, 40 C.F.R. Part 22.

In this case, EPA alleges that Respondent had an unpermitted and illegal discharge of pollutants associated with construction activity into waters of the United States, in violation of Section 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. Specifically, EPA alleges that Respondent failed to obtain the required National Pollutant Discharge Elimination System (NPDES) permit that addresses storm water runoff. Additionally, EPA alleges that Respondent failed to obtain the permit required by Section 404 of the CWA for discharges of dredge and/or fill material which occurred during the channelization of approximately 2,800 feet of a tributary of Tonganoxie Creek. Respondent has reached agreement with EPA on the terms of a proposed CAFO which would resolve these matters and allegations. Under the proposed CAFO, the assessed civil penalty is \$43,277. Final approval of the proposed CAFO is subject to the requirements of 40 C.F.R. § 22.45.

The EPA will receive written comments on the proposed CAFO for a period of thirty (30) days from the date of publication of this notice. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. Persons wishing to receive a copy of the EPA's Consolidated Rules, review the CAFO, comment upon the proposed penalty assessment, or otherwise participate in the proceeding, should contact Kathy Robinson, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas, 66101. Please reference Docket No. CWA-07-2006-0167. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to forty (40) days from the date of this notice.

5/23/06
Date

/s/
Betty Berry
Acting Director
Water, Wetlands and Pesticides Division
U.S. EPA, Region VII

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