

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), 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 Section 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 to seek coverage under a promulgated storm water 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 for development or sale.

9. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer 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-R101000 (the General Permit). The general permit governs storm water 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 an 80 acre residential subdivision construction site known as Dalton’s Ridge located north of Woods Chapel Road and southwest of Blue Springs Lake, in Lee’s Summit, Missouri (the Site). 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 flows from the site via a tributary into Blue Springs Lake. 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. Respondent’s storm water runoff from the Site is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The Site is a “point source” which has caused and continues to cause the “discharge of pollutants” as defined by CWA Section 502, 33 U.S.C. § 1362.

17. Respondent discharged pollutants into a tributary and Blue Springs Lake, both of which are “navigable waters” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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 issued Respondent Permit No. MO-R107486 (The Permit) on February 8, 2007.

20. On August 28, 2007, EPA 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 compliance the CWA.

Findings of Violation

Count 1

Failure to Comply with Narrative Water Quality-Based Effluent Limitations or Conditions

21. The facts stated in paragraphs 1 through 20 above are herein incorporated.

22. Paragraph 1 of the Requirements and Guidelines section of Respondent’s permit states in part that storm water shall not cause a violation of the state water quality standards, including but not limited to the following conditions:

- a. Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses.
- c. Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses.
- g. Waters shall be free from physical, chemical, or hydrologic changes that would impair the natural biological community.

23. The inspection and observations referenced above, reveal that Respondent had discharged storm water laden with silt/sediment into a tributary and into Blue Springs Lake, causing the occurrence of conditions contained in Paragraph 1(a), (c), and (g) of the Requirements and Guidelines section of Respondent's permit.

24. Respondent's discharge of storm water is a violations of Paragraphs 1(a), (c), and (g) of the Requirements and Guidelines section of Respondent's 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 Install and Maintain Best Management Practices (BMPs)

25. The facts stated in paragraphs 1 through 20 are herein incorporated.
26. Paragraph 8 of the Requirements section of Respondent's permit states in part:
- c. Selection of Temporary and Permanent Non-Structural BMP: The permittee shall select appropriate non-structural BMPs for use at the site and list them in the Storm Water Pollution Prevention Plan (SWPPP). The SWPPP shall require existing vegetation to be preserved where practical. The time period for disturbed areas without vegetative cover shall be minimized to the maximum extent practicable.
 - f. Disturbed Areas: Where soil disturbing activities cease in an area for 14 days or more, the permittee shall construct BMPs to establish interim stabilization. Interim stabilization shall consist of well established and maintained BMPs that are reasonably certain to protect waters of the state from sediment pollution over an extended period of time. This may require adding more BMPs to an area than is normally used during daily operations. These BMPs may include a combination of sediment basins, check dams, sediment fences, and mulch. The types of BMPs used must be suited to the area disturbed, taking into account the number of acres exposed and the steepness of the slopes.
 - g. Installation: Peripheral or border BMPs to control runoff from disturbed areas shall be installed or marked for preservation before general site clearing is started. Storm water discharges from disturbed areas, which leave the site, shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment traps, silt fences, etc. prior to leaving the land disturbance site.
 - h. Sedimentation Basins: 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 acre draining thereto. Accumulated sediment shall be removed from the basin as needed to ensure proper operation. Discharges from the basin shall not cause scouring of the banks or bottom of the receiving stream. The SWPPP

shall require the basin be maintained until final stabilization of the disturbed area served by the basin.

- i. The SWPPP shall address other BMPs, as required by site activities, to prevent contamination of storm water runoff.

27. The inspection referenced above revealed that Lot 126 on the southwest corner of Timberline Drive and Kenwood Circle was devoid of vegetation and appeared to have been that way for months.

28. The inspection referenced above revealed that Lots 115, 137, and 149 had been recently disturbed for grading or utility installation and there were no sediment controls in these areas. Also, disturbed soils were seen along the streets in some areas and in most of these areas there were no silt fence or other sediment control in place along the curb to keep the sediment from washing into the street.

29. The inspection referenced above revealed that there was no silt fence or dirt berm behind the house on Lot 154 above the storm water outfall. The soil on the slope behind this lot has not been stabilized and there is no sediment barrier between the disturbed area and the slope leading to the tributary.

30. The inspection referenced above revealed that there was no designated concrete rinse-out area on the site and that some of the concrete rinse-out water deposited on Lot 40 had flowed off of the property and into the wooded area which drains into an adjacent tributary.

31. The inspection referenced above revealed that most of the check dams were not properly constructed. The rock constituting these dams was too large for such an application and the upstream side of each check dam did not have the appropriate size of gravel.

32. The inspection referenced above revealed two rows of downed silt fence lying on the ground southeast from the tributary toward the Hideaway Hill Circle cul-de-sac.

33. Paragraph 11 of the Requirements and Guidelines section of Respondent's permit states that the permittee shall at all times maintain all pollution control measures and systems in good order to achieve compliance with the terms of the general permit.

34. The inspection referenced above revealed that Respondent did not properly maintain curb inlets. Almost all of the curb drain inlets were silted in or deteriorated so as to be rendered ineffective.

35. The inspections reveal that check dams were installed in place of sediment basins and these "basins" were 1) too small, by at least an order of magnitude, 2) not of standard construction for a device of this type, and 3) never cleaned out, resulting in virtually zero storage capacity.

36. Respondent's failure to install and maintain best management practices is a violation of Paragraphs 8 and 11 of the Requirements and Guidelines section of Respondent's 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

37. The facts stated in paragraphs 1 through 20 above are herein incorporated.

38. Paragraph 10 of the Requirements section of Respondent's permit states in part that "the permittee shall conduct regularly scheduled inspections at least once per seven calendar days. A log of each inspection and copy of the inspection report must be retained on the construction site."

39. The inspection referenced above revealed that Respondent did not keep a log of inspections.

40. Respondent's failure to document site inspections is a violation of Paragraph 10 of the Requirements and Guidelines section of Respondent's 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

41. 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 the paragraphs below

42. Within thirty (30) days of the effective date of this Order, Respondent shall submit in writing proposed amendments to the SWPPP, developed by qualified personnel, detailing the specific actions necessary to correct the violations cited herein including detailing what action is required to correct the deficiencies and eliminate and prevent reoccurrence of the violations cited above, and a schedule for implementation and reporting the results to come into compliance with all of the applicable requirements of the permit.

43. Upon receipt of EPA's approval of the Plan, Respondent shall implement such plan in accordance with the schedule contained therein.

44. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of the EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by the EPA, the EPA will provide written comments to Respondent explaining the basis for its decision. Within ten (10) days of receipt of the EPA's disapproval pertaining to any submission, Respondent shall amend/revise the disapproved submission, addressing all of the EPA's comments, and resubmit same to the EPA. If the EPA disapproves the revised submission, the EPA may modify and approve the

same in accordance with its previous comments. In the event of such modification and approval, the EPA will notify Respondent of the modification/approval.

Submissions

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

Michael Boeglin
WWPD/WENF
EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

General Provisions

46. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

47. 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(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the 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

48. Nothing in this Order shall limit the 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

49. 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.

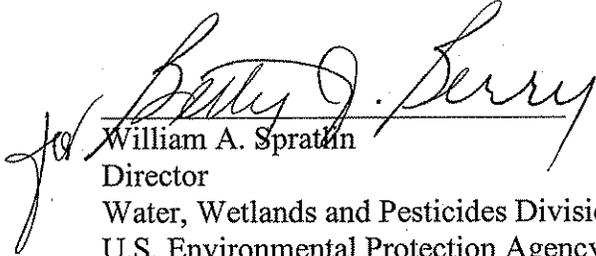
Effective Date

50. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

51. 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 28th day of January, 2008.



William A. Spratin

Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
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Kristina Gonzales

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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:

Roy Allen
Registered Agent
Dalton's Ridge Development Co.
3516 NW Winding Woods Dr.
Lee's Summit, Missouri 64064;

Karl Fett
Director
Missouri Department of Natural Resources
Kansas City Regional Office
500 NE Colbern Road
Lee's Summit, Missouri 64086; and

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

1/29/08

Date