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United States Environmental Protection Agency (E.P.A.)

Office of the Administrator

Region VII

IN THE MATTER OF NORVERN, L.L.C. 112 SOUTH LOCUST WINFIELD, IOWA 52659,
RESPONDENT

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

Clean Water Act

CWA-07-2008-0052

March 27, 2008

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 Norvern, L.L.C, a company registered under the laws of Nebraska and authorized to conduct business in the State of Iowa.

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 Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa 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 IDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. IA10201-10006. This General Permit became effective on October 1, 2002 and expired on October 1, 2007. The General Permit was renewed on October 1, 2007 and will expire on October 1, 2012. This 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 Sherwood Country Estates ("Site") located at the intersection of County Roads G36 and L34 in Hazel Dell Township, Iowa. 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 from Respondent's facility goes into an unnamed tributary of Mosquito Creek. Mosquito Creek empties into the Missouri 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 "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, for a 50-acre portion of the development, generally described as Phase I. IDNR assigned Respondent permit number IA10201-10006, which was issued on July 27, 2007.

20. On October 11 and 12, 2007, 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 compliance with the CWA.

Findings of Violation

Count 1

Failure to Install Appropriate BMPs

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

22. Section D.2.A(1) of the SWPPP section of Respondent's permit states that the Respondent's SWPPP should contain a description of temporary and permanent stabilization practices to ensure preservation of existing vegetation, including geotextiles and other appropriate measures. Section A(2) of the Erosion and Sediment Controls section of Respondent's permit states that the Respondent's SWPPP should contain a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas, including storm drain inlet protection. Section D.2.B of the SWPPP section of Respondent's permit states that permittees are responsible for the installation of storm water management measures prior to final stabilization of the site.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not installed required erosion mats adjacent to paved streets at the Site.

24. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not installed curb drain inlet protection for at least 4 of the 10 curb drains at the Site.

25. 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 Properly Implement BMPs

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

27. Section D.2.A(1) of the SWPPP section of Respondent's permit states that stabilization, measures to preserve existing vegetation should be implemented where attainable. Section D.2.B(2) states that velocity dissipation devices shall be placed at discharge locations to provide a non-erosive velocity flow from the structure to a water course. Section D.2.B(2)(a) states that a sediment basin shall be provided where attainable until final stabilization of the site is achieved. Part IV of Respondent's permit states that facilities must implement the provisions of the SWPPP as a condition of the permit

28. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to effectively stabilize the Site's existing ground cover to protect vegetation and prevent erosion.

29. The EPA inspection referenced in paragraph 20 above, revealed that Respondent installed, but failed to properly implement, erosion control mat and rock apron velocity dissipation devices, resulting in extensive erosion in and around the Site.

30. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to securely attach a standpipe to accommodate overflow from the Site's southwest sediment basin.

31. Respondent's failure to properly implement BMPs 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** (BMPs)

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

33. Section M of the Standard Permit Conditions section of Respondent's permit requires that the Respondent shall at all times properly operate and maintain all facilities and systems of treatment and control installed or used by the permittee to achieve compliance with the conditions of the General Permit and the Storm Water Pollution Prevention Plan ("SWPPP")

34. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained silt fencing.

35. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained sediment basins.

36. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained a rock check dam.

37. 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 4

Failure to Perform and Document Site Inspections

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

39. Section D;4 of the SWPPP section of Respondent's permit requires that qualified personnel shall inspect disturbed areas of the inspection site at a minimum of once per week and within 24 hours of the end of a rain storm producing 0.5 inches of water or greater. Section D.4(C) requires that observations from these inspections be noted in a report, which should include a description of the major observations of the inspection and actions taken.

40. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to perform 36 weekly documented site inspections out of a 70- week period and failed to perform inspections after 27 significant rainfall events.

41. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to adequately describe in site inspection reports the location and extent of deficient or damaged BMPs.

42. 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 5

Failure to Develop an Adequate SWPPP

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

44. Section D. 1 (D) of the SWPPP section of Respondent's permit requires that Respondent's SWPPP provides a site map indicating the location of structural and nonstructural controls identified in the plan. Section D.2 requires that the SWPPP provides a description of controls that will be implemented at the Site. Section C of the SWPPP section of Respondent's permit requires that the Respondent amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that creates a potential for pollutant discharge that has not been addressed in the SWPPP.

45. The EPA inspection referenced in paragraph 20 above, revealed that Respondent's SWPPP lacked the required location and description information for Respondent's rock check dams, berms, and discharge structures for sediment basins.

46. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to amend the SWPPP after Respondent was prohibited by the county to construct a sediment basin in the northeastern section of the Site.

47. 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 GWA, [33 U.S.C. § 1311\(a\)](#) and [§ 1342\(p\)](#).

Order For Compliance

48. 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 49 through 51.

49. 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 current permit, IA10201-10006, which was issued to Norvern, L.L.C. on July 27, 2007.

50. 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. -?.',

51. 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

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

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

53. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Mr. Joe Griffin
Storm Water NPDES Program Coordinator
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

54. 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](#).

55. 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

56. 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

57. 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

58. 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

59. 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 25th day of March, 2008.

[Signature]

For William A. Spratlin

Director

Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency

Region VII

901 North Fifth Street

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