



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202-2733

FINDINGS OF VIOLATIONS and ORDER FOR COMPLIANCE

Docket Number: CWA-06-_____ - _____, NPDES No.: _____

STATUTORY AUTHORITY

The following FINDINGS are made, and ORDER issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Sections 308(a) and 309(a) of the Clean Water Act (herein the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. (herein the "Respondent") is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. Attached is a "Expedited Settlement Offer Worksheet" (herein the "Form"), which is hereby incorporated by reference. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

3. At all times relevant to this Order, Respondent owned or operated the facility described in the Form (herein "the facility"), and for which was legally organized as described on the Form.

4. At all times relevant to this Order, the facility was a "point source" of a "discharge" of "pollutant[s]" in and with its storm water discharges to the receiving waters of "waters of the United States" within the meaning of § 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2. As a result, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under § 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402(a) of the Act, 33 U.S.C. § 1342(a). Section 402(a) provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

7. Under 40 C.F.R. § 122.26(b), the following category of facilities is among those considered to be engaging in storm water Phase 1 "industrial activity" for purposes of § 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

Category (x) Construction

Construction activity including clearing, grading and excavation activities 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.

8. Phase II of the Storm Water Regulations were signed October 29, 1999, published December 8, 1999, became effective February 7, 2000, and require compliance for Phase 2 Construction Activities by March 10, 2003 [64 FR 68722-68851]. Construction sites are automatically designated and required nationwide coverage for "Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres." or "Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres." There is a potential waiver from requirements as determined by the NPDES Permitting Authority for facilities described as "Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five, or (2) That the activity will occur within an area where controls are not needed based on a TMDL [Total Maximum Daily Load] or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern." [40 CFR §122.26(b)(15), n.b. Exhibit 1].

9. Pursuant to Section 402(p) of the Act, EPA issued the Final NPDES General Permit for Storm Water Discharges from Construction Sites ("the permit"), which became effective on July 6, 1998 [63 FR 36489-36519].

10. At all times relevant to this action, the facility was involved in construction activities including clearing, grading, and excavation disturbing one or more acres of total land area -- OR -- disturbing less than five acres of total land area, but part of a larger common plan of development or sale. The approximate number of acres for the common plan is documented on the Form.

11. The facility was conducting construction activities as described in the Form, which continued throughout the time period relevant to this action.

12. Each person that meets the definition of "operator", and engages in construction subject to the NPDES program and defined by 40 CFR § 122.26(b)(14)(x) or 40 CFR § 122.26(b)(15), must apply for and obtain NPDES permit coverage before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

13. At all times relevant to this action, Respondent was an "owner" or "operator" within the meaning of 40 C.F.R. § 122.2 and the permit, and was therefore required to obtain NPDES permit coverage for its construction activities at the facility.

14. The facility was inspected as documented on the Form. As a result of this inspection, the facility was found to be in violation of its NPDES permit.

15. If identified as unpermitted in the Form, each day that Respondent conducted the relevant activities and operated the

facility without NPDES permit coverage was a violation of § 301 of the Act, 33 U.S.C. § 1311.

16. If so documented in the Form, each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these Findings and pursuant to the authority of §§ 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), EPA HEREBY ORDERS Respondent to take the following action:

A. 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. If unpermitted, Respondent shall obtain NPDES permit coverage.

B. Within thirty (30) days of the effective date of this Order, 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.

C. 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, Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations within the shortest possible time. 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.

D. Respondent may be eligible for and request to settle these violations through the storm water Expedited Settlement Offer (ESO) process. If Respondent is not settling these violations through the ESO process, then Respondent is to arrange a Show Cause meeting with EPA to show why Respondent has not complied with the Act or regulations, and why EPA should not take further enforcement action against Respondent for the violations cited. Respondent should arrange a meeting with EPA within forty-five (45) days of the effective date of this Order, to be held at the Region 6 offices, 1445 Ross Ave., 7th Floor, Dallas, Texas. Respondent shall bring to the Show Cause meeting all information or materials it considers relevant to the meeting. To arrange a meeting, or to ask questions or comment on this matter, please contact Mr. Everett Spencer, Enforcement Officer, of our office at (214) 665-8060.

E. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ms. Diana McDonald
Water Enforcement Branch (6EN-WC)
EPA Region 6
P.O. Box 50625
Dallas, TX 75250-0625

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the U.S. Department of Justice. If the United States initiates a civil judicial action, Respondent will be subject to civil penalties of up to \$27,500 per day per violation.

If a criminal action is initiated by U.S. Department of Justice, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, Respondent may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remains in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by Respondent.

Date

Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division