

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Heartland Development, LP.) Docket No. CWA-07-2022-0072
)
)
Respondent)
)
Proceedings under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

2. Complainant, the United States Environmental Protection Agency Region 7 ("EPA" or "Complainant") and Respondent, Heartland Development, LP (hereafter, "Respondent"), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent violated requirements of the National Pollutant Discharge Elimination System ("NPDES") permit issued to Heartland Development, LP, for stormwater discharges associated with industrial activity, issued under the authority of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

Parties

4. The authority to act under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator of EPA Region 7, who in turn has delegated the authority to the Director

of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent is the owner and/or operator of two adjacent residential subdivisions named Covington Court and Covington Creek (“the Site”), respectively, and located in Olathe, Kansas. Respondent is and was, at all times relevant to this matter, a limited partnership organized under the laws of, and authorized to do business in, the state of Kansas.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States.” In turn, “waters of the United States” has been defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

9. 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 stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 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 acres of total land area which are part of a larger common plan of development or sale.

13. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. KDHE NPDES General Permit No. KSR100000 (“General Permit”) was effective March 2, 2012 and expired on March 1, 2017. KDHE reissued the General Permit on August 1, 2017 and it will expire on July 31, 2022.

15. A person seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to KDHE.

16. The General Permit governs stormwater discharges associated with industrial activity, including clearing, grading and excavation. A principal requirement of the General Permit is for the owner or operator to develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from the construction activities and describe and ensure the implementation of best management practices (“BMPs”) that will be used to reduce the pollutants in storm water discharge associated with industrial activity for construction activities at the construction site and to assure compliance with the terms and conditions of the Permit.

EPA’s General Allegations

17. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. The Site consists of two adjacent residential developments named Covington Court (Plats I & II) and Covington Creek (Plats I & II) comprised of approximately 50 acres of disturbed land. The Site is located approximately 0.25 miles southwest of the intersection of College Boulevard and South Lone Elm Road in Olathe, Kansas.

19. Beginning in 2015 through EPA’s March 2021 inspections, described below, Respondent, and/or persons acting on its behalf, cleared and graded a significant portion of the construction projects at the Site. The Site drains through various ditches and at least one tributary that all lead to Little Cedar Creek, which flows into Cedar Creek.

20. Stormwater, snow melt, surface drainage, and runoff water leave the Site and discharge through various drainage pathways to an unnamed tributary to Little Cedar Creek.

21. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and discharges into an unnamed tributary to Little Cedar Creek which is a “waters of the United States,” as defined by 40 C.F.R. § 232.2.

22. Stormwater from the Site contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. Little Cedar Creek is classified as a perennial stream by the United States Geological Survey. Little Cedar Creek is a tributary to Cedar Creek, which is also a perennial stream and a direct tributary to the Kansas River, a traditionally navigable water. Little Cedar Creek is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

24. The discharge of pollutants associated with the construction at the Site, an industrial activity as defined by 40 C.F.R. § 122.26(b)(14), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Respondent’s permit authorizations under the Permit

25. Part 7 of the General Permit requires that a SWPPP, which includes at least the minimum requirements set forth in the General Permit, must be completed and maintained on site before construction activities are commenced and a NOI is submitted to the KDHE, and thereafter executed concurrently with all construction operations at a site.

26. Respondent submitted four separate NOIs seeking authorization to discharge stormwater runoff from construction activities under the General Permit. These NOIs were associated with the different phases of the construction project at the Site, totaling 62.5 acres of land to be disturbed, that were each approved by KDHE (“Respondent’s Permit authorizations). Each of the NOIs filed by Respondent state that stormwater from the Site discharges to a tributary of Little Cedar Creek. The four authorizations issued by KDHE under the General Permit govern Respondent’s stormwater discharges that are associated with the ongoing construction activity at the Site, including clearing, grading, excavation and construction, as follows:

- a. By NOI approved May 6, 2015, authorization KSR111065 for “Covington Court Plat I,” with approximately 14 acres to be disturbed;
- b. By NOI approved June 23, 2015, authorization KSR111902 for “Covington Creek Plat I,” with 11.9 acres to be disturbed;
- c. By NOI approved on April 7, 2016, authorization KSR112567 for “Covington Creek Plat II,” with 16.8 acres to be disturbed; and
- d. By NOI approved on April 6, 2017, authorization KSR112567 for “Covington Court Plat II, with 19.8 acres to be disturbed.”

27. In the April 7, 2016 approval of the NOI for Covington Creek Plat II, KDHE stated “Please ensure that lot development activities with appropriate erosion & sediment control measures are included in the project’s SWPPP.”

EPA's 2021 and 2022 Inspections of the Site

28. On March 10 and 22, 2021, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), performed Construction Stormwater Compliance Evaluations ("2021 Inspections") of the Site to evaluate compliance with the Permit and the CWA.

29. During the 2021 Inspections, the EPA inspector reviewed and obtained copies of documents related to Respondent's compliance with the General Permit, including without limitation, the Site's SWPPPs and Site inspection and self-monitoring records. The EPA inspector also toured and photographed the Site.

30. During the 2021 Inspections, the EPA inspector observed and documented significant amounts of sediment had washed from the Site into the adjacent tributary of Little Cedar Creek.

31. At the conclusion of the March 10, 2021 Inspection, EPA's inspector provided Respondent's representative a verbal summary of observed violations of the General Permit for the Covington Creek and Court developments and stated that the Site's sediment and erosion controls were ineffective or lacking and sediment deposition was observed in the receiving stream.

32. On March 17, 2021, a rain of 0.83 inches occurred at the Site. On March 22, 2021, EPA's inspector returned to the Site and observed that many of the violations previously observed had not been corrected by Respondent, nor had any additional corrective actions been taken as required to address erosion and sediment due to the March 17, 2021 rain event.

33. On April 21, 2021, EPA transmitted copies of separate inspection reports for the Covington Court and Covington Creek developments at the Site.

34. On February 4, 2022, an EPA inspector drove by the Site and observed that significant areas remained unstabilized and/or were missing the required BMPs such as silt fencing and concrete washouts remained uninstalled.

EPA's Specific Allegations

Count 1

Deficiencies in the required SWPPPs

35. Paragraphs 1 through 34 are re-alleged and incorporated herein by reference.

36. Section 7.2 of the General Permit requires that the SWPPP must describe BMPs and/or pollution controls during all phases of construction. Building construction is one of the phases listed in the SWPPPs.

37. As of the dates of EPA's 2021 inspections, none of the Site's SWPPPs included BMPs or pollution controls for the individual lot building construction phase of the developments, in violation of Section 7.2 of the General Permit.

38. Respondent's failures to identify BMPs in the Site's SWPPPs for all phases of construction at the Site are each a violation of the conditions and limitations of Section 7.2 of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. §1342(p).

Count 2
Failure to Perform and Document Adequate Inspections

39. Paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

40. Part 7.2.10 of the General Permit requires that the permittee shall ensure the entire Site is inspected on a regular schedule (not to exceed every 14 days), and by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater. The Permit further requires that a report of each regularly scheduled inspection and required rain event inspection shall be documented and any deficiencies in the operation and maintenance, effectiveness, adequacy or coverage extent of all installed BMPs shall be noted in the inspection report and corrected within seven days unless infeasible. This requirement is found in Section I.h. of Respondent's SWPPPs.

41. Part 7.2.10 of the General Permit also requires that every inspection report is to include the following minimum information: inspector's name, date of inspection, observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, listing of areas where construction operations have permanently or temporarily stopped, and observations of stormwater discharge locations with respect to the effectiveness of the upgradient BMPs.

42. Part 10.1 of the General Permit requires that a permittee shall maintain all records required by the General permit for a period of three (3) years following the date of filing a Notice of Termination. Further, all records shall be kept on-site or in a readily available location identified in the NOI until final stabilization of a Site has been completed. This requirement is found in Section I.a. of Respondent's SWPPPs.

43. For each of the four separate General Permit authorizations, Respondent was required to conduct and document a minimum of 23 inspections per year, with more required if precipitation events of greater than 0.5 inches occurred.

44. During the period between March 2020 and March 2021 there were approximately 28 rain events of greater than 0.5 occurred at the Site.

45. Following EPA's 2021 Inspections, Respondent was only able to provide EPA three incomplete self-inspection reports for the construction activities at the Site for the period from May 2015 through the dates of EPA's 2021 inspections. The provided reports were missing

required components, such as the date of the inspection, inspectors name and the condition of BMPs at the Site.

46. Respondent's repeated failures to perform and/or adequately document and/or maintain records of the required self-inspections and/or corrective actions over the life of the Site's development are each a violation of the conditions and limitations of the Section 7.2.10 of the General Permit and Sections I.a. and I.h. of Respondent's SWPPPs, and as such, are each a violation of Section 402(p) of the CWA, 33 U.S.C. §1342(p).

Count 3

Failure to Properly Install, Operate, and/or Maintain Best Management Practices (alternatively, Failure to Fully Implement the Provisions of the SWPPP)

47. Paragraphs 1 through 46 are re-alleged and incorporated herein by reference.

48. Part 7 of the General Permit ("SWPPP Requirements and Guidelines") states the permittee shall fully implement the provisions of the SWPPP required as a condition of the Permit throughout the term of the construction project. Part 7 of the Permit further states that the permittee shall select, install, utilize, operate and maintain effective BMPs.

49. Part 7.1. of the General Permit ("General SWPPP Requirements") states the permittee shall ensure the BMPs and/or pollution controls are properly installed and maintained at the locations and relative timeframes specified in the SWPPP.

50. Part 7.2.3.(10) of the General Permit ("Detailed SWPPP Plan Requirements") states that the permittee shall control discharges from sediment or soil stockpiles.

51. Part 7.2.3.(15) of the General Permit ("Detailed SWPPP Plan Requirements") states that the permittee shall provide storm drain inlet protection (such as rock bags) for inlets down gradient of disturbed project areas that are not fully stabilized or where construction activity will soon be started. This requirement is found in Section I.f. of Respondent's SWPPPs.

52. Part 7.2.9. of the General Permit ("Additional Site Management BMPs") describes additional BMP requirements necessary to minimize contamination of stormwater from building materials, the storage of chemicals, concrete washout, trash, etc. and can collectively be described as good housekeeping measures. This requirement is found in Section I.f. of Respondent's SWPPPs.

53. During the EPA 2021 and/or 2022 Inspections, EPA's inspector observed and documented the following conditions at the Site:

- a. Silt fencing along South Waterford Drive was installed incorrectly and damaged, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP;

- b. Silt fencing was not installed along the western boundary of Covington Court Plat II between Sunnybrook Boulevard and South Nobel Drive, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP;
- c. Silt fencing was damaged and not maintained along northern boundary or Covington Creek Plat II, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP;
- d. Soil stockpiles on Lot 25, 42 and 43 on Covington Court Plat II did not have BMPs installed to control sediment or soil discharges, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP;
- e. Two stormwater inlets on Covington Court Plat II and three stormwater inlets on Covington Creek Plat II had BMPs that were not being maintained, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP;
- f. No concrete washouts were installed at the Site (in both 2021 and 2022), in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP;
- g. Trash Dumpsters were not present on lots where homes were actively being constructed, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP; and
- h. Construction debris and waste was stored on the ground at Lots 20 & 43 on Covington Court Plat II and at Lots 1, 4, 21 & 22 in Covington Creek Plat I, in violation of Section 7 of the General Permit and Part I.f. of the applicable SWPPP.

54. Respondent's failures to properly install, operate, and/or maintain BMPs at the Site or, in the alternative, failure to fully implement the SWPPPs for each phase of the development at the Site, are each a violation of the conditions and limitations of Section 7 of the General Permit and Part I.f. of Respondent's SWPPPs, and as such, are each a violation of Sections 301 402(p) of the CWA, 33 U.S.C. §1342(p).

Count 4
Failure to Update BMPs and/or Amend the SWPPP

55. Paragraphs 1 through 54 are re-alleged and incorporated herein by reference.

56. Part 7.3.2. of the General Permit ("Amendment of the SWPPP") requires that the permittee shall modify or amend the SWPPP, at a minimum, whenever there is a change in design, operation, or maintenance of BMPs, pollution controls, or pollution prevention measures, and whenever the SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation, such as excessive site erosion, excessive sediment leaving the Site, or excessive sediment deposits in drainage channels, streams, or lakes. This requirement is found at Part 1.a. of Respondent's SWPPPs.

57. Section 11.1. of the General Permit ("General Conditions, Proper Operation and Maintenance") requires that "Pollution control systems, erosion control measures or best management practices which require maintenance shall be maintained, repaired or replaced in a

timely manner to avoid discharging stormwater runoff laden with pollutants or sediment which adversely impacts water quality. The permittee shall take all necessary steps to minimize or prevent any adverse impact to human health or the environment resulting from noncompliance with any requirements specified in this permit.”

58. During EPA’s 2021 inspections, EPA’s inspector observed and documented the following conditions at the Site:

- a. Significant rill erosion and sediment migration into the tributary of Little Cedar Creek downstream of the stormwater outfall located west of lot 67 in Covington Creek Plat II. The inspector did not observe any BMPs installed below this outfall;
- b. Significant rill erosion and sediment migration into the tributary of Little Cedar Creek downstream of the stormwater outfall located northwest of lots 51 and 52 in Covington Creek Plat II. The inspector did not observe any BMPs installed below this outfall; and
- c. Significant rill erosion and sediment migration into the tributary of Little Cedar Creek downstream of Sunnybrook Boulevard overpass located in Covington Court Plat I.

59. The rill erosion, sediment migration, and impacts on the receiving streams observed during EPA’s 2021 inspections are conditions that required Respondent to install updated BMPS and/or to amend the Site’s SWPPPs to meet the requirements of Sections 7.3.2. and 11.1. of the General Permit and Part I.a. of Respondent’s SWPPPs.

60. Respondent’s failures to update BMPs and/or to amend the Site’s SWPPPs in violation of the conditions and limitations of Sections 7.3.2. and 11.1. of the General Permit and Part I.a. of Respondent’s SWPPPs, and as such, are each a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 5
Unauthorized Discharges

61. Paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

62. Part 3, Paragraph 1 of the Permit (“What This Permit or the Rainfall Erosivity Waiver Does Not Cover”) states that the Permit does not authorize a discharge of stormwater runoff from construction activities which violate the provisions of this NPDES general permit.

63. During EPA’s 2021 Inspections, the EPA inspector observed and documented significant deposits of soil and sediment on the banks and in the stream channel of the unnamed tributary to Little Cedar Creek at several locations along the west and north boundaries of Covington Creek Plat II.

64. Part 3, Paragraph 4 of the Permit (“What This Permit or the Rainfall Erosivity Waiver Does Not Cover”) states that the Permit does not authorize construction activities that result in the discharge of stormwater runoff which violates the Kansas Surface Water Quality Standards.

65. 28-16-28e(b) of the Kansas Administrative Regulations (KAR) sets forth general criteria for surface waters of the state of Kansas and states “The natural appearance of surface waters shall not be altered by the addition of color producing or turbidity-producing substances of artificial origin.” (See 28-16-28e(b)(8))

66. During EPA’s 2021 Inspections, the EPA inspector observed and documented discharges of stormwater from the Site into the unnamed tributary to Little Cedar Creek, resulting in observed increases of turbidity in both the unnamed tributary and Little Cedar Creek, that demonstrated a violation of Kansas Surface Water Quality Standards caused by discharges of sediment from the Site.

67. The observed discharges were the result of Respondent’s ongoing failures to conducted required inspections, update and amend the Site’s SWPPPs, and/or install and maintain adequate BMPs as required by the General Permit.

68. Respondent’s discharges of soil and sediment from the Site into the unnamed tributary of Little Cedar Creek that violated water quality standards for turbidity are not authorized by the General Permit, and as such, are violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

CONSENT AGREEMENT

69. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

70. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

71. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

72. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

73. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney’s fees.

74. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has considered the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

75. The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it. Respondent consents to receiving service at the following email address: tfrench@tomfrenchconstructioninc.com.

76. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

77. Respondent certifies by signing this Consent Agreement/Final Order that they have taken actions to address the violations cited above and is in compliance at the Site with the requirements of KDHE's General Permit and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its applicable regulations.

Penalty Payment

78. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of \$51,690.00, pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

79. Respondent shall pay the penalty identified in Paragraph 78 by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2022-0072 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to EPA Region 7, Regional Hearing Clerk, at R7_Hearing_Clerk_Filings@epa.gov and Howard Bunch, EPA Region 7, Attorney, at bunch.howard@epa.gov.

80. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

81. Respondent understands, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

82. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

83. The effect of settlement described above is conditional upon the accuracy of the Respondent's representation to the EPA, as memorialized in Paragraph 77 of this Consent Agreement/Final Order.

84. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

85. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

86. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties, and damages.

General Provisions

87. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

88. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

89. The state of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

90. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

91. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Howard Bunch
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Heartland Development, L.P:

8/8/2022
Date

Tom French Pres
Signature

Tom FRENCH
Name

PRESIDENT
Title

tfrench@tomfrenchhomes.com
Email Address

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by email to Respondent:

Tom French, President
Heartland Development, L.P.
tfrench@tomfrenchconstructioninc.com

Copy by email to Attorney for Complainant:

Howard Bunch
U.S. Environmental Protection Agency Region 7
bunch.howard@epa.gov

Copy by email to the Kansas Department of Health and Environment:

Tom Stiles
Kansas Department of Health and Environment
Tom.Stiles@ks.gov

Date

Hearing Clerk, Region 7