

**BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	CASE NO. 3422
	)	
AZ 21, L.L.C.	)	COMPLAINT, COMPLIANCE ORDER,
	)	AND NOTICE OF OPPORTUNITY FOR
A Nebraska Limited Liability Company,	)	A HEARING
	)	
IIS# 100857	)	
	)	
RESPONDENT.	)	

**I. INTRODUCTION**

1. This Complaint, Compliance Order, and Notice of Opportunity for a Hearing ("Order") is issued pursuant to *Neb. Rev. Stat. §81-1507* by the Director of the Nebraska Department of Environmental Quality ("NDEQ" or "Department") to Blondo Street Development, L.L.C. ("Respondent"). Respondent is an active domestic limited liability company engaged in residential subdivision development in west Omaha, Douglas County, Nebraska. Complainant has determined that Respondent is in violation of the Nebraska Environmental Protection Act (NEPA) *Neb. Rev. Stat. §81-1501 et seq.* (Reissue 2014; Cum. Supp. 2016) and Title 119, Nebraska Administrative Code (NAC), *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System.*

**II. JURISDICTION**

2. NDEQ is the agency of the State of Nebraska charged with the duty, pursuant to *Neb. Rev. Stat. §81-1504*, of exercising exclusive general supervision, administration, and enforcement of NEPA, and all rules, regulations, and orders promulgated under such acts.



3. NDEQ is further charged, pursuant to *Neb. Rev. Stat.* §81-1504(4), with the duties to act as the state water pollution control agency for all purposes of the Clean Water Act ("CWA"), as amended, 33 U.S.C. 1251 *et seq.*

4. The Nebraska Environmental Quality Council (EQC), pursuant to its authority in *Neb. Rev. Stat.* §81-1505, has promulgated Title 119 to regulate the discharge of pollutants to waters of the State through the issuance of National Pollutant Discharge Elimination System (NPDES) permits for purposes of CWA.

5. Pursuant to *Neb. Rev. Stat.* §81-1507, the Director may order necessary compliance actions be taken in response to the violations alleged within a reasonable time as described in Section IV, below.

### **III. COMPLAINT**

6. Respondent, at all times material herein, has owned and operated a residential subdivision development, general contracting, or homebuilding company operating in west Omaha, Douglas County, Nebraska.

7. Respondent at all times material herein, has owned and continues to own an outlot in the "Windgate Ranch" subdivision development located in the northwest quarter of Section 25, Township 15 North, Range 10 East, in Douglas County, NE. The parcel identification number assigned by Douglas County, Nebraska, is 2540387492.

8. Respondent's outlot contains drainage ways, retention basins, sediment traps, sedimentation ponds and other storm water management and conveyance structures.

9. On September 20, 2012, and on April 13, 2013, NDEQ received Construction Storm Water Notices of Intent (CSW-NOI) from Respondent seeking permit coverage for phases 1 and

2 , respectively, of Respondent's development project, including the outlot described in paragraph 7, under the National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit Number NER110000.

10. As part of its CSW-NOI submittals received on September 20, 2012 and on April 13, 2013, Respondent certified, under penalty of law, that a Storm Water Pollution Prevention Plan (SWPPP) had been developed for the project and that the SWPPP contained:

- a. site and activity descriptions;
- b. sediment and pollution control measures and record keeping requirements related to these measures;
- c. erosion prevention measures and record keeping requirements related to these measures;
- d. inspection requirements, maintenance of Best Management Practices (BMPs) and associated record keeping requirements; and
- e. a plan for final stabilization of the project.

11. On September 21, 2012 and April 19, 2013, NDEQ sent Respondent authorization letters and assigned Respondent authorization numbers NER113350 and NER113723, respectively, allowing Respondent to discharge construction storm water for phases 1 and 2 of the project described in the CSW-NOI in accordance with the terms and conditions of NPDES Construction Storm Water General Permit Number NER110000.

12. Among the terms and conditions of NPDES General Permit Number NER110000, Respondent must:

- a. have developed a SWPPP that assures compliance with the terms and conditions of NPDES General Permit Number NER110000 (Part III.A.2.d);
- b. implement the SWPPP as written from commencement of construction activity until final stabilization is complete (Part III.A.4);
- c. maintain in effective operating condition all erosion and sediment control measures and other protective measures identified in the SWPPP (Part III.E.1);
- d. perform and document regular site inspections according to the requirements of Part III.I., including, but not limited to: ensuring the proper operation of erosion and sediment control measures; looking for evidence of pollutants entering or potentially entering the storm water conveyance system, assessing whether

- control measures are effective in preventing impacts to waters of the state, and looking for evidence of off-site sediment tracking by vehicles (Part III.I.4);
- e. perform maintenance within seven days on BMPs that have been identified by inspection as not operating effectively (Part III.E.1);
  - f. remove sediment from sediment traps, sedimentation ponds, and retention basins when design capacity has been reduced by 50 percent (Part III.E.3);
  - g. amend its SWPPP if during inspections or investigations by site staff, or by local, state, or federal officials, it is determined that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site (Part III.J.2);
  - h. modify its SWPPP as necessary within seven days of inspection to include additional or modified BMPs to correct problems identified by inspection (Part III.J.3);
  - i. select, install, and maintain all control measures in accordance with any relevant manufacturer specifications and good engineering practices and, if used incorrectly, replace or modify the control measure as soon as practicable (Part III.L.1); and
  - j. remove off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts (Part III.L.2).

13. On February 7, 2017, NDEQ conducted an inspection to evaluate Respondent's compliance with the terms and conditions of NPDES General Permit Number NER110000 at Respondent's subdivision development. The NDEQ inspector observed:

- a. sediment basins that were filled or partially filled with sediment and, as a result of this sedimentation, were not operating as designed;
- b. sediment basins, drainage ways, and a receiving stream littered with construction materials, garbage, and other items of solid waste;
- c. sediment basins overgrown with weeds, trees, and other plants;
- d. soil erosion along the berms and banks of sediment basins;
- e. soil erosion in drainage ways leading to waters of the state;
- f. sediment fences that had been toppled or buried by eroded sediment and were not operating as designed;

- g. engineered drainage control structures, such as discharge pipes and drainage culverts, that were filled or partially filled with sediment and, as a result of this sedimentation, were not operating as designed;
- h. storm drains completely filled with sediment and no protective pads or other structures to prevent the entry of sediment into storm drains;
- i. sediment leaving Respondent's outlot at its low point and discharging to waters of the state including a 30-acre flood control pond owned by the Papio Missouri River Natural Resources District (NRD); and
- j. soil drag-out and track-out by vehicles accessing construction sites and streets.

14. The NDEQ inspector was accompanied on February 7, 2017, by two construction storm water inspectors from the City of Omaha, Public Works Department, and two representatives from E & A Consulting Group, Inc., the firm that had prepared Respondent's grading plan and SWPPP, designed Respondent's storm water management structures and controls, and been engaged by Respondent to assist with some responsibilities of SWPPP implementation, including site inspections.

15. The City of Omaha also conducted its own inspections of the development site on March 10, 2017 and May 24, 2017. All inspections documented observations similar to those observations made by NDEQ on February 7, 2017. The City of Omaha has indicated to NDEQ that Respondent was mailed a copy of its two inspection reports.

16. On April 25, 2017, NDEQ re-inspected Respondent's subdivision development and confirmed that Respondent had not taken steps to comply with Title 119, its SWPPP and Construction Storm Water General Permit NER 110000.

17. On May 10, 2017, NDEQ sent Respondent a Notice of Violation (NOV) that notified Respondent it was operating in violation of Title 119 and its Construction Storm Water General Permit NER110000, that Respondent must take immediate action to comply, and that Respondent must submit a written description of the corrective action taken within fourteen days.

18. Respondent has not responded to the May 10, 2017, NOV.

19. Respondent's discharge of sediment and sediment-contaminated water violates Neb. Rev. Stat. §81-1506(1)(a) which states that "[i]t shall be unlawful for any person [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state . . ."

20. Respondent's discharge of sediment and sediment-contaminated water contravenes the terms and conditions of its NPDES General Permit Number NER110000 in violation of Neb. Rev. Stat. §81-1506(2)(c) which makes it unlawful to "increase in volume or strength any waste in excess of permitted discharges specified under any existing permit."

21. Respondent's discharge of sediment and sediment-contaminated water violates Neb. Rev. Stat. §81-1506(3)(c) which states that "[i]t shall be unlawful for any person [t]o [v]iolate any rule or regulation adopted and promulgated by the [Nebraska Environmental Quality] council pursuant to the Environmental Protection Act. . ."

22. The sediment and sediment-contaminated water that has been discharged and continues to be discharged is a "pollutant" as defined in Title 119, Chapter 1, 089.

23. Respondent's unauthorized discharge of sediment and sediment-contaminated water violates Title 119, Chapter 10, Section 002.01 which states that "[n]o person shall discharge storm water containing any pollutant except as authorized by NPDES permit or this Chapter."

24. Respondent's failure to control storm water, implement its SWPPP, and comply with the terms and conditions of Construction Storm Water General Permit NER 110000 violates its NPDES permit.

25. The Director has determined that the actions required by this Order are necessary and appropriate to protect the public health, welfare, or the environment.

#### **IV. COMPLIANCE ORDER**

Based upon the Complaint set forth above, IT IS HEREBY ORDERED:

26. Respondent shall as soon as possible but not later than 10 days after receipt of this Order return all erosion and sediment control measures, BMPs, and other protective measures identified in the SWPPP and Construction Stormwater General permit to their effective operating condition and maintain these measures in their effective operating condition by:

- a. removing accumulated sediment from all sediment traps, sedimentation ponds, retention basins, and all other erosion control measures and storm water structures and conveyances;
- b. removing accumulated sediment from behind silt fencing and install or re-install silt fencing along all areas designated in the SWPPP;
- c. removing accumulated sediment from all other areas of Respondent's subdivision development, including streets, where sediment has accumulated due to Respondent's failure to implement or amend its SWPPP;
- d. making and completing repairs and maintenance, including preventive maintenance, on each BMP to ensure proper function;

- e. installing inlet protection at all discharge locations where traffic safety considerations permit; and
- f. installing, pursuant to the design specifications in its SWPPP, all temporary sediment basins, drainage ditches, swales, and other storm water conveyance and control structures which are required by the SWPPP, but have not yet been installed.

27. Respondent shall as soon as possible but not later than 10 days after receipt of this Order identify and implement additional control measures and BMPs to prevent future discharge of sediment, sediment-contaminated water, and vehicle track out from the construction sites.

28. Respondent shall as soon as possible but not later than 10 days after receipt of this Order implement and maintain temporary or permanent stabilization measures for disturbed portions of the site where construction activities have temporarily or permanently ceased and amend its SWPPP accordingly.

29. Respondent shall comply with all remaining requirements of its SWPPP and terms and conditions of Construction Storm Water General Permit NER 110000 not expressly identified in paragraphs 26 through 28.

30. By January 1, 2018, Respondent shall submit a written description of the actions taken to comply with paragraphs 26 through 28.

31. Information to be submitted under this Order shall refer to IIS# 100857, Case No. 3422, and shall be sent to submitted to:

Reuel Anderson  
Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln, NE 68509-8922



## **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

32. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and requests, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

33. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code, *Rules of Practice and Procedure*, Chapter 7, and be mailed to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or be hand delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

## **VI. SETTLEMENT CONFERENCE**

34. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Brian McMullen, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

35. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

## **VII. RESERVATION OF RIGHTS**

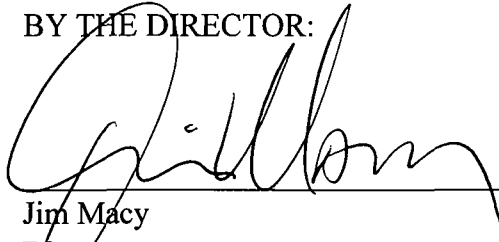
36. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this

Complaint, Compliance Order and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement.

It is so ORDERED:

Dated this 20<sup>th</sup> day of December 2017.

BY THE DIRECTOR:

A handwritten signature in black ink, appearing to read "Jim Macy", is written over a horizontal line.

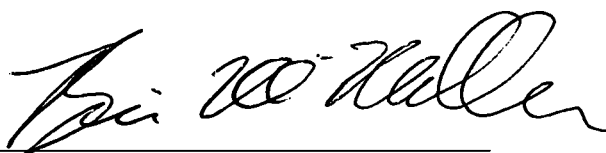
Jim Macy  
Director

NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complain, Compliance Order, and Notice of Opportunity for a Hearing was served by certified United States mail, postage prepaid, return receipt requested his 27<sup>th</sup> day of February, 2018, upon the Registered Agent for Respondent listed below:

Thomas R. Falcone  
Registered Agent  
AZ 21, LLC  
25155 N 108<sup>th</sup> Ave  
Peoria, AZ 85353

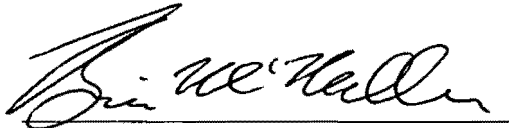
A handwritten signature in black ink, appearing to read "Brian McMullen", written over a horizontal line.

Brian McMullen  
Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for a Hearing was served by certified United States mail, postage prepaid, return receipt requested this 21<sup>st</sup> day of December, 2017, upon the Registered Agent for Respondent listed below:

Thomas R. Falcone  
Registered Agent  
AZ 21, LLC  
10410 S. 144th Street, Suite 3C  
Omaha, NE 68138

  
\_\_\_\_\_  
Brian McMullen  
Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for a Hearing was served by certified United States mail, postage prepaid, return receipt requested this 20<sup>th</sup> day of November, 2017, upon the Registered Agent for Respondent listed below:

Thomas R. Falcone  
Registered Agent  
AZ 21, LLC  
18175 Mayberry St.  
Omaha, NE 68022



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Brian McMullen  
Attorney