UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF THF-S HIGH RIDGE DEVELOPMENT, L.L.C. Respondent Proceedings under Section 309(a) and (g) of the Clean Water Act, 33 U.S.C. § 1319(a) and (g)	COMPLAINT AND CONSENT AGREEMENT/ FINAL ORDER Docket No. CWA-07-2002-0230

COMPLAINT

Jurisdiction

1. This administrative action is being conducted pursuant to Section 309(a) and (g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a) and (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. This Complaint and Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division.

4. The Respondent is THF-S High Ridge Development, L.L.C., which is incorporated in the state of Missouri.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

6. 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.

Factual Background

7. On or about October 29, 1999, Respondent's contractor(s) and/or others in contractual privity with Respondent placed fill material into an intermittent tributary of Saline Creek, Jefferson County, Missouri.

8. On or about November 10, 1999, Respondent notified the Corps of Engineers of the placement of the fill material into an intermittent tributary of Saline Creek, Jefferson County, Missouri.

9. Respondent did not have a CWA Section 404 permit for the discharge of fill material into waters of the United States.

Findings of Violation

10. The facts stated in paragraphs 7 through 9 above are herein incorporated.

11. Respondent's placement of fill material into an intermittent tributary resulted in the discharge of pollutants from a point source into waters of the United States.

12. Respondent's discharge of fill material from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

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

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

15. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty as set forth below. The mitigated civil penalty is a result of the Respondent's self-disclosure of the violation.

16. Respondent consents to the mitigation set forth below in the Final Order.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

18. Respondent and Complainant each agree to bear their own costs and attorney's fees.

19. Nothing contained in the 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.

20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(a) and (g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a) and (g), IT IS ORDERED that:

1. Respondent shall pay a civil penalty of Forty-Five Thousand Nine Hundred Seventy-Five Dollars ($45,975). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. Payments made by Respondent shall identify the Respondent by name and docket number and shall be made by certified or cashier's check payable to the United States Treasury and remitted to:

Mellon Bank
EPA - Region 7
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, PA 15251

A copy of the transmittal letter and check shall be mailed to:

Jenna Wischmeyer
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

2. For mitigation of the violation, Respondent shall submit Nineteen Thousand Two Hundred Fifty Dollars ($19,250) to the Missouri Conservation Heritage Foundation Stream Stewardship Trust Fund for the purpose of restoring, preserving, and enhancing a stream system within Missouri. Said payment shall be made in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. Payments made by Respondent shall identify the Respondent by name and docket number and shall be made by certified check payable to the Missouri Conservation Heritage Foundation - Stream Stewardship Trust Fund and remitted to:

Missouri Conservation Heritage Foundation
c/o Stream Stewardship Trust Fund
P.O. Box 366
Jefferson City, Missouri 65102-0366

A copy of the transmittal letter and check shall be mailed to:

Jenna Wischmeyer
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

PARTIES BOUND

3. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESERVATION OF RIGHTS

4. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

5. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

EFFECTIVE DATE

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/27/02
Date

Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII

9/27/02
Date

Martin Steincamp for
Jenna Wischmeyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

RESPONDENT:
THF-S HIGH RIDGE DEVELOPMENT, L.L.C.

9-26-02
Date

Name: Michael H. Staenberg
Title: Manager

IN THE MATTER OF
THF-S High Ridge Development, L.L.C.
CWA-07-2002-0230

IT IS SO ORDERED.

September 30, 2002 Robert L. Patrick

Date

Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF THF-S High Ridge Development, L.L.C.
Docket No. CWA-07-2002-0230

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Martha Steincamp
Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Frank H. Hackmann
Sonnenschein, Nath & Rosenthal
One Metropolitan Square, Suite 3000
St. Louis, Missouri 63102

Dated: 9/30/02

Kathy Robinson
Kathy Robinson
Regional Hearing Clerk