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# Le Sueur County, MN

Tuesday, May 6, 2014

Board Meeting

## Item 10

### 10:10am Darrell Pettis Administrator

*Sale of Tax Forfeited Property of City of Montgomery*

*Lake Washington Outlet Structure*

*MPCA Letter*

*CSAH 23*

*Tyrone Twp Bridge*

*Waters of the US*

Staff Contact:



# Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

April 17, 2014

Mr. Steve Rohlfig, County Board Chair  
Le Sueur County  
88 Park Avenue South  
Le Center, MN 56057

Mr. Robert Barnett, Chief Executive Officer  
Barnett Bros. Inc.  
41375 State Highway 13  
Kilkenny, MN 56052

RE: Notice of Violation – NPDES/SDS Construction Stormwater Permit No. C00036321

Dear Messrs. Rohlfig and Barnett:

Enclosed is a Notice of Violation (NOV) issued by the Minnesota Pollution Control Agency (MPCA) to Le Sueur County and to Barnett Bros. Inc. (Regulated Parties) for alleged violations at the Regulated Parties' site SAP 040-614-009 located in Waterville, Minnesota. By sending this NOV, the MPCA is notifying the Regulated Parties of alleged violations that the MPCA staff discovered during inspections on October 22, 2013, and November 6, 2013. This NOV also provides the Regulated Parties an opportunity to respond to the alleged violations.

The first section of the NOV cites the state rules and permit conditions which the MPCA alleges that the Regulated Parties violated, and describes the actions or omissions constituting the violations. The second section titled, "Corrective Action" contains corrective actions that the Regulated Parties are to complete in order to resolve the NOV.

Given the seriousness of the alleged violations cited in the NOV, the Regulated Parties will be sent a proposed Stipulation Agreement (Agreement) which will be used to resolve the violations. An Agreement is a legally binding document between the Regulated Parties and the MPCA involving a compliance schedule, a civil penalty for the alleged violations and stipulated penalties for any future violation of the Agreement. Within ten days of receipt of the proposed Agreement, the Regulated Parties and their legal counsel will be requested to arrange to meet with the MPCA staff at the MPCA Office in St. Paul to discuss the draft Agreement. The Regulated Parties will be expected to offer evidence, comments and proposed revisions to any part of the Agreement which they feel is inaccurate or incomplete.

Please note, the Corrective Action section contains dates by which the actions should be completed. Please also note, if the Regulated Parties believe the allegations in this NOV are incorrect, the MPCA requests a written response within ten days.

*i-enf-iii-10a · 11/6/13 · Doc Type: Notice of Violation*

**STATE OF MINNESOTA**  
**Minnesota Pollution Control Agency**  
**Municipal Division**

**NOTICE OF VIOLATION**

**In the Matter of:** Le Sueur County and Barnett Bros. Inc.  
SAP 040-614-009  
Waterville, Minnesota

<b>To:</b> Le Sueur County	Barnett Bros. Inc.
88 Park Avenue South	41375 State Highway 13
Le Center, MN 56057	Kilkenny, MN 56052

**PLEASE BE ADVISED**, that the Minnesota Pollution Control Agency (MPCA) has sufficient information to allege that Le Sueur County and Barnett Bros. Inc. (hereinafter Regulated Parties) have violated the following provisions of state rules and permit conditions at their site SAP 040-614-009 (Site) located in Waterville, Minnesota.

**1. NPDES/SDS General Stormwater Permit for Construction Activity (MNR100001) APPENDIX A. Part C.1.a. Additional BMPs for Special Waters and impaired waters provides in relevant part:**

1. During Construction.

- a. All exposed soil areas must be stabilized as soon as possible to limit soil erosion but in no case later than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.

On October 22, 2013, the MPCA conducted an inspection of the Site and observed temporary stockpiles with exposed soils that were not stabilized in the following locations: Site Markers 44+50 on the North side of the road and 35+00 on the North side of the road. There was no construction activity in the locations inspected on October 22, 2013. On November 6, 2013, the MPCA re-inspected the Site and observed temporary stockpiles with exposed soils that were not stabilized in the same locations. There was no construction activity in the locations inspected on November 6, 2013.

On October 22, 2013, the MPCA conducted an inspection of the Site and observed exposed soils that were not stabilized in the following locations: Site Markers 51+00 thru 54+00 on the North side of the road. Around Site Markers 51+00 thru 54+00 on the North side of the road, excessive riling was observed in the exposed soils. According to the Regulated Parties' inspection reports, the last rainfall event greater than 0.5 inches was the weekend of October 5, 2013, and October 6, 2013. The inspection reports also stated that on October 15, 2013, the Site had a light rain event. In addition to the Regulated Parties' inspection reports, the MnDNR State Climatology website, documented that there were no rainfalls events between the Site inspection conducted by the Regulated Parties on October 19, 2013, and the MPCA's inspection on October 22, 2013. Based on the information from the Regulated Parties' inspection reports and the MnDNR State Climatology website, 16 days from the last rainfall event greater than 0.5 inches had lapsed and the Regulated Parties had completed two inspections.

**4. NPDES/SDS General Stormwater Permit for Construction Activity (MNR100001) Part IV.C.2. Sediment Control Practices** provides in relevant part:

2. Sediment control practices must be established on all down gradient perimeters before any up-gradient land disturbing activities begin. These practices shall remain in place until final stabilization has been established in accordance with Part IV.G.

On October 22, 2013, the MPCA inspected the Site and observed and documented that upgradient land disturbing activities had begun and sediment control practices were absent at the following downgradient perimeter locations on the Site: along the bottom edges of a pipe culvert located on the South side of the road at Site Marker 59+50, along the bottom edges of a pipe culvert located on the North side of the road at Site Marker 59+50, and along the bottom edges of a pipe culvert at Site Marker 207+00.

On November 6, 2013, the MPCA re-inspected the Site and observed and documented that upgradient land disturbing activities had begun and sediment control practices were still absent at the downgradient perimeter located along the bottom edges of the pipe culvert on the South side of the road at Site Marker 59+50.

**5. NPDES/SDS General Stormwater Permit for Construction Activity (MNR100001) Part IV.C.5. Sediment Control Practices.**

5. Temporary soil stockpiles must have silt fence or other effective sediment controls, and cannot be placed in surface waters, including stormwater conveyances such as curb and gutter systems, or conduits and ditches unless there is a bypass in place for the stormwater.

On October 22, 2013, the MPCA inspected the Site and observed and documented temporary soil stockpiles at the following locations: In the general area of Site Markers 35+50, 62+50, and stockpiles located between Site Markers 45+00 and 48+00. These stockpiles did not have silt fence or other effective sediment controls installed at the base of the piles.

On November 6, 2013, The MPCA re-inspected the Site and observed and documented temporary soil stockpiles located between Site Markers 45+00 and 48+00. These stockpiles still did not have silt fence or other effective sediment controls installed at the base of the piles.

**6. NPDES/SDS General Stormwater Permit for Construction Activity (MNR100001) Part IV.C.1. Sediment Control Practices** provides in relevant part:

1. Sediment control practices must minimize sediment from entering surface waters, including curb and gutter systems and storm sewer inlets.

On October 22, 2013, the MPCA inspected the Site and observed and documented that sediment control practices at Site Markers 201+00 thru 206+00 on the West side of the road and at Site Markers 204+00 through 206+00 on the East side of the road were not sufficient to minimize sediment from entering surface waters.

**9. NPDES/SDS General Stormwater Permit for Construction Activity (MNR100001) Part. IV.E.4.c. Inspections and Maintenance:**

c. Surface waters, including drainage ditches and conveyance systems, must be inspected for evidence of erosion and sediment deposition. The Permittee must remove all deltas and sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems, and re-stabilize the areas where sediment removal results in exposed soil. The removal and stabilization must take place within seven (7) days of discovery unless precluded by legal, regulatory, or physical access constraints. The Permittee shall use all reasonable efforts to obtain access. If precluded, removal and stabilization must take place within seven (7) calendar days of obtaining access. The Permittee is responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work.

On October 22, 2013, the MPCA inspected the Site and observed and documented sediment deposited in the drainage ditch located at Site Markers 59+50 North and South of the road and at Site Marker 207+00 South of the road. According to the Regulated Parties' inspection reports, the last rainfall event greater than 0.5 inches was the weekend of October 5, 2013, and October 6, 2013. The inspection reports also stated that on October 15, 2013, the Site had a light rain event. In addition to the Regulated Parties' inspection reports, the MnDNR State Climatology website, documented that there were no rainfalls events between the Site inspection conducted by the Regulated Parties on October 19, 2013, and the MPCA's inspection on October 22, 2013. Based on the information from the Regulated Parties' inspection reports, 16 days from the last rainfall event greater than 0.5 inches had lapsed and the Regulated Parties had completed two inspections. During the Regulated Parties' inspections, the Regulated Parties would have identified the sediment deposits in the drainage ditch. The Regulated Parties failed to remove sediment from the drainage ditch within seven days of discovery.

**10. NPDES/SDS General Stormwater Permit for Construction Activity (MNR100001) Appendix A. Part C.1.b. Additional BMPs for Special Waters and Impaired Waters:**

1. During Construction.

b. Temporary sediment basin requirements described in Part III.B.1-5 must be used for common drainage locations that serve an area with five (5) or more acres disturbed at one time.

On October 22, 2013, the MPCA inspected the Site. Based on the MPCA's inspection, the MPCA has determined that five (5) or more acres of disturbed soil drain to a common location. Therefore, a temporary sediment basin must be provided prior to the runoff leaving the construction site or entering surface waters. The Regulated Parties failed to construct a temporary sediment basin or provide equivalent sediment controls to treat runoff before it leaves the construction site or enters surface waters as required under Part III. B. of the Permit.

- d. Corrective actions taken (including dates, times, and party completing maintenance activities);
- e. Date and amount of all rainfall events greater than 1/2 inch (0.5 inches) in 24 hours;
- f. Documentation of changes made to the SWPPP as required in Part III.A.4.

On October 25, 2013, the MPCA reviewed the inspection and maintenance records provided by the Regulated Party (Owner) for the Site. The inspection and maintenance records provided by the Regulated Party were missing the following required elements: a) Time of inspections; c) Recommendations for corrective actions; e) Date and amount of rainfall events greater than 0.5 inches in 24 hours; and f) Documentation of changes made to the SWPPP.

According to the Regulated Parties' inspection reports, the last rainfall event greater than 0.5 inches was the weekend of October 5, 2013, and October 6, 2013. The inspection reports also stated that on October 15, 2013, the Site had a light rain event. In addition to the Regulated Parties' inspection reports, the MnDNR State Climatology website, documented that there were no rainfalls events between the Site inspection conducted by the Regulated Parties on October 19, 2013, and the MPCA's inspection on October 22, 2013. Based on the information from the Regulated Parties' inspection reports, 16 days from the last rainfall event greater than 0.5 inches had lapsed and the Regulated Parties had completed two inspections. There were many sediment and erosion BMPs that were in need of maintenance. There was sediment deposited into the drainage ditch. There were no rainfall events between the last Regulated Parties' inspection and the MPCA's inspection on October 22, 2013. Given all of that, the Regulated Parties' inspection records did not identify the maintenance needs of the BMPs and what corrective actions were required to correct them. The Regulated Parties' inspection records identified the date of the inspections but did not provide the time of the inspections. The Regulated Parties' inspection records identified that there was rainfall, but failed to provide the amount. The Regulated Parties failed to record the maintenance and inspection requirements and retain them in the SWPPP in accordance with Part III.D.

#### **CORRECTIVE ACTIONS**

To address the alleged violations cited in this Notice of Violation (NOV), the Regulated Parties are to complete the following actions:

1. Within 30 days the Regulated Parties must submit to Noel Kepler, MPCA, 520 Lafayette Road North, St Paul, Minnesota 55155-4194, a receipt indicating that the Regulated Parties have registered for and paid for at least one individual from Barnett Bros., Inc. and one individual from Le Sueur County to attend one of the University of Minnesota's "2001 Certification: Construction Site Management" courses.
2. Within ten days after receipt of this NOV, stabilize exposed temporary stock piles, which have had inactivity for seven (7) days or longer.

...THIS REQUIREMENT HAS BEEN COMPLETED.

3. Immediately upon receipt of this NOV, stabilize ditch bottoms 200 feet back from property edge or from the point of discharge to surface waters.

...THIS REQUIREMENT HAS BEEN COMPLETED.

**NOTICE**

**THEREFORE**, you are hereby given notice that the above alleged violations have been recorded and documented by the MPCA. This NOV and your response does not preclude the MPCA from taking further action with respect to the above alleged violations. The MPCA reserves the right to seek any and all remedies available under Minn. Stat. §§ 115.071, 116.072, 116.073, and 609.671 and all applicable rules or permits for any violation cited in the NOV. If the Regulated Parties believe the allegations in this NOV are incorrect, please respond in writing within ten days after receiving this NOV and explain any inaccuracies. If the Regulated Parties do not respond, the MPCA will conclude that the alleged violations occurred as set forth in the NOV.

DATED:

4/17/14

MUNICIPAL DIVISION



Marni Karnowski, Manager  
Stormwater Section  
Municipal Division

MK/NK:ch

Address Submittals Requested Above To:

Noel Kepler, Pollution Control Specialist  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194

April 23, 2014

320-656-3503  
Jkolb@RinkeNoonan.com

LeSueur County Highway Department  
Attn: Darrell Pettis  
88 South Park Avenue  
LeCenter, MN 56057

**Re: Comments to U.S. EPA Proposed Rule on Waters of the United States**

Dear Mr. Pettis:

On March 25, 2014, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) jointly released a proposed rule to define the scope of streams and wetlands the agencies claim jurisdiction for protection under the Clean Water Act.

The Clean Water Act, for example, requires a permit for the discharge of dredged or fill materials into “navigable waters,” which are defined by the Act as “waters of the United States.” In 2001 and again in 2006, the U.S. Supreme Court issued decisions attempting to define “waters of the United States” which left the regulated community unclear as to which streams and wetlands were subject to the Act’s protections and permitting requirements.

In 2001, the Court ruled on *SWANCC v. Army Corps of Engineers*, holding that isolated wetlands which are not adjacent to open water are not subject to the federal agencies’ jurisdiction. In its most recent decision, *United States v. Rapanos*, no single opinion commanded a majority of support from the nine-member Court to create a controlling, precedential standard. As a result, the Court issued two recommended standards.

First, the plurality opinion authored by Justice Scalia held that agencies could only claim jurisdiction over wetlands that demonstrated a “continuous surface water connection” to bodies of water that are “waters of the United States” in their own right. The concurrence opinion authored by Justice Kennedy broadens the scope to claim that the Clean Water act covers wetlands that have a “significant nexus” to “waters of the United States.” Kennedy wrote “wetlands possess the requisite nexus, and thus come within the statutory phrase ‘navigable waters,’ if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’”



April 23, 2014

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Since *Rapanos* was issued in 2006, the regulated community has struggled to understand the scope of the EPA and Army Corps' regulatory authority under the Clean Water Act. In the fall of 2013, the EPA Office of Research and Development issued a report entitled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, which summarized current, scientific understandings about water connections, the factors that influence them, and the mechanisms by which connected waters singly or in aggregate affect the function of waters downstream. The report was drafted to bolster the agencies' evidence that ephemeral-flowing streams and wetlands have a significant nexus to downstream, navigable waters. Rinke Noonan prepared comments to the report on behalf of the Lincoln County Board of Commissioners, as the county drainage authority, discussing the county's concerns that the report did not provide a clear understanding of the science behind establishing a "significant nexus" and would contribute to the complex, jurisdictional bureaucracy already plaguing the agencies for making jurisdictional determinations over streams and wetlands.

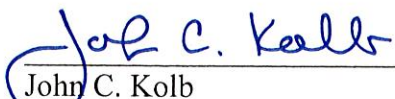
On Monday, April 21, 2014, the EPA and Army Corps published their proposed rule for public comment. Rinke Noonan has again been asked to draft comments to be submitted to the EPA and the Army Corps on behalf of several county drainage authority clients and watershed district clients. Comments must be submitted to the agencies on or before July 21, 2014.


As you may know, we represent many drainage authorities across Minnesota that will be directly affected by this rule. In order to have it represent the largest group possible, we are suggesting that each of the counties and watershed districts receiving this letter consider contributing \$500 toward a joint submission of comments. If enough counties and watershed districts join in submitting joint comments, the total cost of preparing and submitting the comments will be divided equally among all clients and any funds not used will be returned equally to each client.

These proposed rules will have a direct impact on your constituents. The drafting of comments will take time and effort and we would appreciate hearing from you by May 15th on joining the group comments.

Do not hesitate to contact us if you have any questions.

Sincerely,

  
\_\_\_\_\_  
John C. Kolb  
JCK/KRV

  
\_\_\_\_\_  
Kurt A. Deter  
KAD/KRV

4/22/2014 2:55 PM