

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

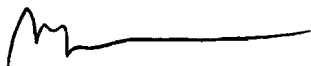
U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
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REGIONAL HEARING
CLERK

DATE: May 26, 2009

SUBJECT: **Justification of a Clean Water Act Administrative Penalty**
Case Name - Robinson Concrete, Inc., d/b/a Franklin Street Ready-Mix Facility, Robinson Concrete, Inc. Franklin Street Pit Sand and Gravel Mine, and Vitale Ready Mix Concrete, Inc.

Docket Number - CWA-02-2009-3404

NPDES Tracking Number - NYR00E267, NYR00D442 and NYU000213

FROM: Murray Lantner, P.E, Environmental Engineer 
Water Compliance Branch

TO: Case File

This memorandum serves to document support for an Administrative Penalty against the subject entity after taking into consideration the statutory factors in Section 309(g) of the Clean Water Act ("CWA" or the "Act").

A. **Facility Description**

1. Facility - Robinson Concrete, Inc.
2. NPDES Permit Number - NYR00E267, NYR00D442, and NYU000213
3. Location - 3486 Franklin St. Rd. Auburn, New York 13021
4. Standard Industrial Classification (SIC) Code - SIC codes 3273 and 1442
5. Owner - Mr. Michael Vitale, Sr.
6. Operator - Robinson Concrete, Inc.
7. Discharge point - Outfall 001
8. Receiving water - Bread Creek, a tributary of Putnam Brook, to the Seneca River/Erie Canal System

B. **Calculation of the Proposed Penalty with Respect to the Violation**

1. Nature, Circumstances, Extent, Gravity

Robinson Concrete took over the ready mix and sand and gravel operations in 1972. Unpermitted stormwater discharges occurred until the site obtained permit coverage in late August or September of 2008. Process wastewater discharges associated with washing of concrete trucks, according to Respondent, occurred until 2006 when process wastewaters were rerouted and not discharged. In 2008, Robinson Concrete began

collecting and reusing truck wash wastewater and reduced its water usage. Based on EPA's August 7, 2007 inspection, and Robinson Concrete's July 15, 2008 reply to EPA's IR letter, EPA learned there is an underground spring in the bank of the main drainage swale that discharges during dry weather.

As previously noted discharges of process wastewater and groundwater began on or before April 1, 2004 and stormwater discharges occurred during rain events.

a) Nature

Robinson Concrete, Inc. violated Section 301(a) of the Act by its failure to obtain the appropriate permits for discharging storm water from 1972 (although these violations began as early as 1972, EPA used April 1, 2004 as the starting date for calculating penalties due to the Statute of Limitations) until mid August or September 2008 without applying for or obtaining coverage under a New York State Department of Environmental Conservation (NYSDEC) SPDES Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Also, Respondent disposed process wastewaters associated with truck wash waters discharged from Outfall 001 to Bread Creek until 2006. Process wastewater discharges require coverage under an Individual SPDES Permit. Robinson Concrete did not have either an individual permit or a MSGP coverage.

b) Circumstances

Discharging without MSGP and Individual Permit coverage

On August 7, 2007, a duly authorized representative of EPA Region 2 conducted a Compliance Evaluation Inspection (CEI) at the site. At the time of the August 7, 2007 inspection, the EPA inspector saw a discharge from Outfall 001 and found that Respondent failed to:

- i. obtain coverage under an individual SPDES Permit for its process wastewater and stormwater discharges.
- ii. obtain coverage under a SPDES MSGP and eliminate its process wastewater discharges. Coverage under the MSGP was obtained on October 2008.

EPA issued Request for Information (RFI) letter, CWA-IR-08-016 on January 14, 2008 under Section 308 of the CWA. On March 20, 2008, Respondent replied to the RFI letter.

EPA issued Administrative Compliance Order (AO) and RFI, CWA-02-

2008-3015 on May 20, 2008 that required Robinson Concrete to submit information and obtain permit coverage. Respondent replied to the AO in a timely manner by letters dated July 15, 2008, July 26, 2008, August 27, 2008 and September 30, 2008.

Respondent submitted an individual permit application to the NYSDEC on December 27, 2006. NYSDEC sent a notice of incomplete application dated January 12, 2007. Following a meeting with NYSDEC on May 11, 2007, on July 19, 2007, Robinson Concrete submitted additional information and requested that they be covered under the MSGP.

Robinson Concrete submitted two Notices of Intent (NOI) dated July 15, 2008 to the NYSDEC and received MSGP coverage under two (2) separate MSGP Permits Nos. NYR00E267 and NYR00D442 for the ready mix and sand and gravel facilities in late August or September 2008.

c) Extent

1. Unpermitted discharges from Outfall 001 began prior to April 1, 2004. According to Robinson Concrete's March 20, 2008 letter, Respondent indicated that process wastewater discharges ceased in August 2006. However, storm water discharges continue to the present, but Respondent obtained MSGP coverage in late August or September of 2008. For the foregoing reasons, and due to the Statutes of Limitations noted above, EPA determined the period of violation is from April 1, 2004 until August, 2008.

d) Gravity (Seriousness of the Violation)

Based on the findings discussed above, Robinson Concrete, Inc. has violated the permit and NPDES regulations which implements Sections 301(a), 308 and 402 of the Act. Respondent's failure to apply for and obtain permits, and comply with the CWA and NPDES regulations meant that the implementation of the NPDES program was hindered. These permits are designed to reduce or minimize the discharge of pollutants which might impair or degrade the water quality of receiving waters. Robinson Concrete discharged stormwater and process wastewater to Bread Creek without monitoring or pollutant controls.

SPDES Permits contain effluent limitations, monitoring, reporting requirements and additional conditions. Respondent's failure to comply with these requirements, created a threat to human health and the environment. Discharges from sand and gravel and cement facilities

typically have a high pH and Total Suspended Solids which are threats to aquatic life. In addition process wastewaters could contain chemical admixtures and heavy metals.

The receiving waters were designated by New York as Class C which are suitable for fish propagation and survival. The water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes.

e) Proposed Gravity Component

In the instant case, based upon the above findings, a substantial penalty is necessary to deter Respondent and others from violating the Act. A gravity penalty component of \$104,076.00 is being proposed after taking into consideration the length of the violations, the potential and/or actualized threats to the receiving waters and human health, the importance of compliance, and seriousness of the violations.

2. Economic Benefit Component

As summarized in the table below the economic benefit from delayed costs associated with developing and implementing a Storm Water Pollution Prevention Plan (SWPPP), implementing Best Management Practices (BMPs), cessation of truck wash waters (process waters) from discharging from Outfall 001, obtaining permit coverage, and avoided costs of conducting site inspections, visual monitoring, annual chemical monitoring, site maintenance resulted in an economic benefit of \$48,267.

Description of Project	Capital Cost	One Time Cost	Annual Cost	Noncompliance Date	Compliance Date	Dollar Years	BEN
SWPPP & Site Map	\$9,229	\$10,369		7/1/2004	7/15/2007	Jul-07	\$1,762.00
BMP Implementation	\$265,000	\$20,000		7/1/2004	12/31/2006	Jul-08	\$33,410.00
Site inspections and Annual Monitoring			\$2,400	7/1/04	12/31/2007	Jul-08	\$12,247.00

Description of Project	Capital Cost	One Time Cost	Annual Cost	Noncompliance Date	Compliance Date	Dollar Years	BEN
Site Maintenance	\$1,550		\$2,200	7//1/04	12/31/2007	Jul-08	
Construction of Infiltration Basins and series of sediment basins to collect sediment and runoff from raw material storage areas	\$10,000	\$1,500		7/1/2004	6/15/2006	Jul-06	\$848.00
BEN Result							\$48,267
Penalty Payment Date June 30, 2009							

iii. **Total Economic Benefit is \$48,267**

3. **Preliminary Proposed Penalty** = (Proposed Gravity Component) + (Economic Benefit)

$$\text{Preliminary Proposed Penalty} = \$39,000.00 + \$48,267 = \$87,267$$

C. **Calculation of the Penalty Adjustment Factors with Respect to the Violator**

1. **Prior History of Violations**

Other than the violations and administrative orders discussed above, we are not aware of other SPDES/NPDES violations.

2. **Degree of Culpability**

Requirement to obtain a Clean Water Act Permit under Sections 301 and 402 of the Clean Water Act for process wastewater have been in effect since the 1970s. The requirement to obtain a SPDES Permit for industrial stormwater discharges from this type of facility has been in existence since at least 1998. Therefore Robinson Concrete should have been aware of the need to obtain NPDES/SPDES Permits for the period of time beginning in April 1, 2004.

3. **Ability to Pay**

EPA has not requested financial records for this case. If requested, EPA can

review financial records, tax returns, if provided by the company to assess whether there are ability to pay issues. However, notwithstanding the slowdown in the economy and construction industry, a recent Dun and Bradstreet Report dated March 12, 2009 ran from D&B's portal database (formerly its Spectrum database) indicated the company's sales volume was approximately \$30 million.

D. **Final Proposed Penalty** = (Proposed Gravity Component) + (Economic Benefit) +/- (Adjustment Factors)

1. Final Proposed Penalty = Preliminary Proposed Penalty = (Proposed Gravity Component) + (Economic Benefit)
 $\$39,000 + 48,267 = \$87,267$

E. **Recommendations**

I recommend that a penalty of \$87,267 be proposed based on the above findings and length of violations, and after taking into consideration the statutory factors in Section 309(g) of the Act