

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

N.R. Hamm Quarry, Inc.)
Kelly Quarry #95)
2294 Paint Road)
Chapman, Kansas 67431)

Respondent.)

Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

Docket No. CWA-07-2010-0047

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region 7, and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent is N.R. Hamm Quarry, Inc., a corporation incorporated under the laws of Kansas and authorized to conduct business in the State of Kansas.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. 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.

5. 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 conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as facilities classified as Standard Industrial Classification 32 (Stone, Clay, Glass, and Concrete Products).

9. 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.

10. KDHE implemented a General Permit for the discharge of stormwater under the NPDES, on September 1, 2006. The permit governs stormwater discharges associated with industrial activity for asphalt plants, concrete batch plants, crushing plants, and construction sand and gravel facilities.

Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a facility known as NR Hamm Kelly Quarry #5, located at 2294 Paint Road, Chapman, Kansas, 67431 (the Site).

13. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into an unnamed tributary of Swensen Creek, which flows into Terrapin Lake, which flows into the Smoky Hill River. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

15. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharged pollutants into a tributary of Swenson Creek, which flows into Terrapin Lake and the Smoky Hill River, a “navigable water” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Respondent disturbed the Site for limestone crushing beginning in 1995. The Site was closed for business in 2002, but Respondent maintains NPDES permit coverage for portions of the Site that remain disturbed. KDHE issued the Respondent NPDES Permit No. KA0093955, which became effective on July 1, 2009, superseding the previously issued NPDES permit. The permit governs stormwater discharges associated with industrial activity.

20. On August 11, 2009, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Maintain Best Management Practices (BMPs)

21. The facts stated in Paragraphs 11 through 20 above are herein incorporated.
22. Part D of Respondent’s NPDES Permit requires that the settling pond(s) shall be dredged when needed so adequate storage capacity is maintained.
23. The EPA inspection referenced in Paragraph 20 above, documented that Respondent failed to dredge the settling pond of sediment, so that adequate storage capacity was not maintained, resulting in the discharge of sediment offsite.
24. Respondent’s failure to properly operate and maintain the settling pond is a violation of Respondent’s permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Order For Compliance

25. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 26 and 27.

26. Within thirty (30) days of the Effective Date of this Order, as defined in Paragraph 33 herein, Respondent shall take all corrective action that is necessary to eliminate and prevent recurrence of the violation cited in this Order and to come into compliance with all of the applicable requirements of Respondent's Permit. At a minimum, Respondent shall adequately dredge and maintain the sediment pond to prevent the discharge of sediment offsite.

27. Within thirty (30) days of the Effective Date of this Order, as defined in Paragraph 33 herein, Respondent shall submit a written report detailing the specific actions taken to correct the violation cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of this or similar violations to EPA at the address listed in Paragraph 28 below.

Submissions

28. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Mr. Raju Kakarlapudi
Water Enforcement Branch
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

29. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

30. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall

not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

31. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

32. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

33. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

Termination

34. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 28th day of December, 2009.


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Kristen Nazar
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Ms. Deloris D. Myers-Robb
Registered Agent
N.R. Hamm Quarry, Inc.
One Perry Plaza
Perry, Kansas 66073

And via first class mail to:

Mr. Karl Mueldener
Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

12/29/09
Date

Clarah A. Moreno