

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2017-0035
Whitaker Aggregates, Inc.	)	
d/b/a Centerville Quarry.	)	
Centerville, Kansas	)	
	)	FINDINGS OF VIOLATION AND
Respondent	)	ORDER FOR COMPLIANCE ON
	)	CONSENT
Proceedings under Section 309(a)(3) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)(3)	)	
_____	)	

**Preliminary Statement**

1. The following Findings of Violation and Administrative Order for Compliance on Consent (Order) are made and issued pursuant to 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 U.S. 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 Whitaker Aggregates, Inc. (Respondent or Whitaker), a corporation under the laws of the state of Kansas. Respondent is the owner and/or operator of a facility located within the Linn County, near Centerville, Kansas.

3. The EPA and the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (NPDES) permit for discharges of industrial stormwater. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for Whitaker to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order, except that Respondent admits the

jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

### **Statutory and Regulatory Framework**

6. 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 in accordance with the terms of an NPDES permit issued pursuant to that Section.

7. 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.

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

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

10. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications (“SIC”) 10 through 14, which includes establishments primarily engaged in mineral industries, SIC 14. *See* 40 C.F.R. § 122.26(b)(14)(iii). SIC code 1422 is specific to facilities and products produced using crushed and broken limestone.

12. The Kansas Department of Health and Environment (KDHE) is the state agency within the state of Kansas that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

13. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

### **EPA's General Allegations**

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

15. At all times relevant for this action, Respondent is and was the owner and/or operator of a limestone quarry ("facility," "site," or "Centerville Quarry"), operating under SIC 1422, comprised of approximately twenty-eight acres located on the east side of Road 1077 just south of Centerville, (NE ¼ of NW ¼ of Section 20, Township 21 South, Range 22 East), in Linn County, Kansas.

16. Process waste water from washing activities at its limestone quarry and crushing operations, as well as stormwater, snow melt, surface drainage and runoff water leave Respondent's facility and discharge to Sugar Creek, which flows to the Marais des Cygnes River.

17. Process waste water and stormwater from the facility contain "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14).

19. Process waste water discharges and stormwater discharges associated with industrial activity are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. Sugar Creek and the Marais des Cygnes River identified in Paragraph 16, above, are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. Process waste water discharges and stormwater runoff from industrial activity at Respondent's above referenced facility 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).

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

23. On August 20, 2009, KDHE granted NPDES Permit No. KS009275 (hereafter "Permit" when referred to in general or "2009 Permit" when referred to with specificity), to the Whitaker Aggregates, Inc., Centerville Quarry, for discharges from the "Outfall 001A1 – Treated wash-water from settling pond," and "Outfall 001 – Stormwater runoff," to the Marais des Cygnes River via Sugar Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The 2009 Permit was effective from September 1, 2009, to August 31, 2014. The 2009 Permit was administratively continued by KDHE until a new permit was issued.

24. On October 23, 2014, KDHE reissued NPDES Permit No. KS009275 (hereafter “2014 Permit” when referred to with specificity), to the Whitaker Aggregates, Inc., Centerville Quarry, for discharges from the “Outfall 001A1 – Treated wash-water from settling ponds,” and “Outfall 001A1 – Pit Drainage and Stormwater Runoff,” to the Marais des Cygnes River via Sugar Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The 2014 Permit is effective from November 1, 2014, to October 31, 2019. For purposes of this action, and except as noted herein, the provisions of the 2009 and 2014 Permits are significantly similar.

25. On approximately April 13 and April 20, 2016, the EPA performed an Industrial Stormwater Inspection (Inspection) of Respondent’s site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.

26. During the Inspection, the EPA inspector requested to review and copy the Respondent’s records related to the Permits, including, but not limited to, the facility’s stormwater pollution prevention plan dated February 28, 2008 (hereafter “SWP2 Plan”), employee training records, monthly discharge monitoring reports, and monthly and annual inspection records. The EPA inspector also toured the facility, observed discharge locations and photographed various stormwater-related areas.

27. A Notice of Potential Violation (NOPV) was issued by the EPA inspector at the conclusion of the Inspection.

28. By letter dated April 30, 2016, the Respondent submitted information to the EPA inspector, “[a]ddressing issues of the NPDES Inspection.”

29. A copy of the Inspection report, was sent to Respondent by the EPA by letter dated June 20, 2016.

### **EPA’s Findings**

#### **Count 1**

#### **Inadequate Stormwater Pollution Prevention Plan / Failure to Re-Evaluate and Modify SWP2 Plan**

30. All facts stated above are re-alleged and incorporated herein by reference.

31. Section D., Paragraph 5, of Respondent’s 2009 Permit authorized the discharge of industrial stormwater in accordance with K.A.R. 28-16-28 and the requirements of the Permit, unless specifically excluded or waived in accordance with an implemented Stormwater Pollution Prevention Plan (SWP2 Plan) developed in accordance with Attachment A of the Permit.

32. Attachment A of Respondent’s 2009 Permit requires that the SWP2 Plan be specific to the industrial activities and site characteristics occurring at the location described in the Permit, and include, in pertinent part: the pollution prevention team members; a description of

potential pollutant sources, including a detailed site map; a description of stormwater management controls that address minimum components; qualified facility personnel to perform annual comprehensive site evaluations; monitoring and recordkeeping procedures; and a process to re-evaluate and modify the SWP2 Plan in a timely manner, but in no case more than 90 days after significant changes to the site or its controls or an indication, through inspections or evaluations that existing controls are ineffective and/or additional controls are needed.

33. Section D., Paragraph 5, of Respondent's 2014 Permit requires Respondent to develop and implement written procedures to minimize the discharge of silt from the site, including methods to minimize erosion of stockpiles on-site and minimize the amount of solids in the water discharge from the quarry pit.

34. Section D., Paragraph 7, of Respondent's 2014 Permit, in pertinent part, requires Respondent to implement its 2008 SWP2 Plan or a more recent, revised plan submitted to the KDHE, and further requires that the 2008 SWP2 Plan:

. . . shall be re-evaluated and modified in a timely manner, but in no case more than 90 days after (1) a change in the design, construction, operation or maintenance of the facility that would have a significant effect on the potential for discharge of pollutants from the facility's outfalls; (2) deficiencies are found in the SWP2 Plan or any BMPs, discovered during the site compliance evaluation or during other on-site inspections conducted by KDHE; (3) a visual inspection of the site indicates the plan appears to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the SWP2 Plan; (4) an outfall is either added or eliminated.

35. Respondent's SWP2 Plan, in pertinent part, identifies members of the SWP2 team, an inventory of exposed material that may be potential pollution sources, a site map, and a description of best management practices (BMPs).

36. Based on observations and information collected from the EPA Inspection, review of Respondent's SWP2 Plan and other available information regarding Respondent's facility, Respondent failed to prepare an adequate SWP2 Plan and/or amend the SWP2 Plan after there was a change in design, construction, operation or maintenance at the facility that had an impact on the potential to discharge pollutants or when controls were determined to be ineffective, as follows:

- a. The SWP2 Plan inventory of exposed material that may be potential pollution sources was inconsistent with potential pollution sources identified by the EPA inspector;
- b. The SPW2 Plan site map lacks specificity, is not to scale or labeled, and is not consistent with existing conditions at the facility; and
- c. The BMPs described in the SWP2 Plan do not include any structural BMPs, are inconsistent with BMPs currently in place at the facility, and some of the identified BMPs are missing.

37. Respondent's failure to develop and update, as appropriate, an adequate SWP2 Plan is a violation of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 2**

#### **Failure to Perform and/or Document Facility Inspections and Evaluations**

38. All facts stated above are re-alleged and incorporated herein by reference.

39. Section A of Respondent's 2009 Permit requires Respondent to inspect the outfall(s) and receiving stream(s) in May and September to ensure compliance with Water Quality Standards, and to maintain a log documenting the results of any visual inspections performed.

40. Section A of Respondent's 2014 Permit requires Respondent to visually inspect the outfall(s) and receiving stream(s) in May and September to ensure compliance with Water Quality Standards, and to maintain a log documenting the results of any monitoring or inspections performed.

41. Section 7 of Respondent's SWP2 Plan states that inspections will be performed after every rainfall event above 2 inches, every calendar quarter, and that a complete facility evaluation will be performed annually. An example inspection report form is attached to the SWP2 Plan at Appendix B.

42. Data obtained from the National Centers for Environmental Information's National Oceanic and Atmospheric Administrations, Global Historical Climatology Network- Daily climate data Station code Centerville 4 SW KS US identify 12 months between March 20, 2012, and the date of the Inspection during which rains of above two inches occurred in the area of Respondent's facility.

43. During the Inspection, the inspector determined that for the period from July 1, 2012, to the date of the Inspection, the facility had no records for outfall or stream visual inspections or monitoring in May and September, inspections after 2 inch rains, or annual complete facility evaluations as required by the 2009 and 2014 Permits and the SWP2 Plan. Facility records for that time period also indicated not all quarterly inspections were conducted as required by the SWP2 Plan. Further, Respondent's personnel interviewed during the Inspection stated that monitoring, inspections and evaluations had not been performed.

44. Respondent's failure to perform and/or document inspections and monitoring of its outfalls and the stream, and to perform and/or document facility inspections and evaluations are violations of the Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 3**

#### **Failure to Implement and Maintain Appropriate Controls**

45. All facts stated above are re-alleged and incorporated herein by reference.

46. Section D, Paragraph 5, of Respondent's 2009 Permit authorized Respondent to discharge industrial stormwater in accordance with applicable state regulations, the Permit and in accordance with an implemented SWP2 Plan developed in accordance with Attachment A of the Permit. Attachment A requires, in pertinent part, that Respondent develop and implement stormwater management controls appropriate for the facility and a schedule to implement such controls, including, but not limited to:

- a. good housekeeping requiring the maintenance of areas in a clean, orderly manner including handling, processing, and storage areas for raw materials, scrap metals, fuels, paints, etc.;
- b. preventative maintenance, including timely inspection and maintenance of stormwater management controls, like oil water separators, catch basins, etc.;
- c. spill prevention and response procedures, including appropriate material handling procedures and storage requirements; and
- d. sediment and erosion control measures to minimize erosion in areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion.

47. Section 5 of Respondent's SWP2 Plan includes a table with a list of BMPs for the facility, including good housekeeping, preventative maintenance, spill prevention response, sediment and erosion controls.

48. During the EPA Inspection, the inspector observed the following conditions:

- a. used oil was stored in one or more open containers, exposed to the elements;
- b. the diesel fuel tank was not double-walled, as described in the SWP2 Plan BMPs, and did not have secondary containment;
- c. the wash pond and quarry settling pond, used for both process water and stormwater storage, were small and shallow, and likely not adequate for stormwater management; and
- d. several areas of erosion indicated that stormwater and/or wastewater drained away from wash pond and quarry settling pond, including runoff from the northwest side of the gravel storage pile and drainage from the top of ledge on the south side of the quarry draining east.

49. Respondent's failure to develop, implement and maintain effective stormwater management controls is a violation of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4  
Failure to Conduct Employee Training**

50. All facts stated above are re-alleged and incorporated herein by reference.

51. Attachment A, Paragraph 3.e., of Respondent's 2009 NPDES permit requires Respondent to include in its SWP2 Plan a training program for new and existing staff to inform personnel responsible for implementing activities identified in the SWP2 Plan or otherwise responsible for stormwater management, at all levels of responsibility, of the components of the SWP2 Plan.

52. Section 8 of Respondent's SWP2 Plan state that the frequency of training is within one week of hire for new employees and annually for existing employees. A blank example form listing general areas of training is attached to the SWP2 Plan at Appendix C.

53. During the EPA Inspection, the inspector noted that the facility failed to conduct or complete records of employee training in any year from 2011 to the date of the Inspection.

54. Respondent's failure to conduct or retain records of employee training is a violation of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Reasonable Time to Achieve Compliance**

55. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that six (6) months is a reasonable time for Respondent to achieve compliance with its Permit and install and implement all appropriate stormwater controls.

**Order for Compliance on Consent**

56. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

57. In accordance with this Order, the Respondent shall immediately cease all discharges, except as in compliance with the Permit, and shall take all necessary actions to comply with the conditions and limitations of its Permit and SWP2 Plan.

58. Paragraphs 59 through 61 shall pertain to the facility identified in paragraph 15 above.

59. Within thirty (30) days of the effective date of this Order, Respondent shall secure the services of an independent appropriately qualified professional, e.g., a licensed professional engineer, to review, revise and update, as appropriate, a SWP2 Plan and site map for Respondent's facility that meets all requirements of the NPDES Permit for the facility. The revised SWP2 Plan and site map for the facility shall meet all requirements of the facility's

Permit and include applicable and appropriate provisions from the EPA guidance document, Developing Your Stormwater Pollution Prevention Plan, A Guide for Industrial Operators, June 2015: [www.epa.gov/sites/production/files/2015-11/documents/swppp\\_guide\\_industrial\\_2015.pdf](http://www.epa.gov/sites/production/files/2015-11/documents/swppp_guide_industrial_2015.pdf), and any applicable KDHE guidelines.

60. Within 120 days of the effective date of this Order, Respondent shall provide a report regarding the Centerville Quarry to the EPA, with a copy to the KDHE, that includes:

- a. A copy of an updated and revised SWP2 Plan and site map in compliance with Paragraph 59, above;
- b. A copy of procedures developed and implemented to sample Outfall 001A1 at least once a month when a discharge occurs;
- c. A copy of DMRs completed since conclusion of the EPA Inspection on April 20, 2016, including sampling data and results;
- d. An outline of training provided to employees regarding the SWP2 Plan since conclusion of the EPA Inspection on April 20, 2016, and a list of participants;
- e. A copy of the results from each visual monitoring event that has been conducted since conclusion of the EPA Inspection on April 20, 2016;
- f. A copy of the reports for each quarterly site inspection conducted since the conclusion of the EPA Inspection on April 20, 2016;
- g. A copy of the report generated from any annual comprehensive site evaluation that has been conducted since the conclusion of the EPA Inspection on April 20, 2016;
- h. A description, with photographic documentation, of all actions taken and all structural controls installed and non-structural controls implemented to bring the facility into full compliance with all conditions and limitations of the Permit since the conclusion of the EPA Inspection on April 20, 2016;
- i. A description of and schedule for all additional actions, structural controls and non-structural controls planned to bring the facility into full compliance with all conditions and limitations of the Permit; and
- j. A written procedure and form for keeping a daily log that clearly documents each day's precipitation amount and whether a discharge from the identified outfall occurred.

61. By no later than January 15, 2018, and July 15, 2018, Respondent shall submit to the EPA, with a copy to KDHE, a report containing, at a minimum, the following information for the previous six (6) calendar months for Respondent's facility:

- a. A daily log enumerating each precipitation event, the amount of precipitation received, and if the identified outfall discharged;
- b. A copy of DMRs and sampling data from samples taken when identified outfalls discharge;
- c. A copy of the report for each visual monitoring event, site inspection and annual comprehensive site evaluation that has been conducted;
- d. A description of all employee training that has been conducted and a list of participants; and
- e. A detailed description of all actions, structural controls and non-structural controls that have been implemented or that are planned to bring the facility into full compliance with all conditions and limitations of the Permit, including any updates or amendments to the SWP2 Plan.

**62. Third-Party Verifier Review and Implementation of Verifier's Recommendations**

- a. Respondent shall retain, at its expense, a third-party verifier ("Verifier") to conduct a comprehensive verification of Respondent's compliance at the facilities identified in Paragraph 63, with the requirements of this Order set forth in Paragraph 62(d) and the CWA. Respondent shall require that the Verifier act independently and objectively when performing all activities related to assessing the Respondent's compliance with this settlement and the CWA. Respondent shall provide the Verifier with full access to the facilities listed in Paragraph 63, and provide or otherwise make available any necessary personnel and documents to fully perform all verification activities.
- b. Respondent has identified Shafer Kline to conduct the verification as set forth in Paragraph 62(d) and certifies by signature of this Order that the Shafer Kline will conduct the verification independent of any influence by Respondent.
- c. The Verifier shall perform the following activities that EPA will review to assess Respondent's compliance with the settlement and the CWA.
  - i. Assessment of each facility's Stormwater Pollution Prevention Plan to ensure the plan is specific to, and appropriate for, each individual facility;
  - ii. Assessment of each facility's installed stormwater best management practices;
  - iii. Assessment of each facility's self-inspection reports;
  - iv. Assessment of each facility's SWPPP map complete with flow direction, stormwater BMPs, adjacent stormwater MS4 inlets or conveyances, stormwater outfalls, location of the nearest water course, etc.;
  - v. Assessment of each facility's training program;
  - vi. Assessment of each facility's good housekeeping program;

- vii. Assessment of each facility's sampling program, sampling location, sample collection procedures, etc.;
- viii. Assessment of each facility's material storage areas such as limestone stockpile areas, fuel distribution areas, etc.; and
- ix. Assessment of any other areas within each facility's footprint that could contribute to a discharge of pollutants.

d. Within six months of the effective date of this Order, the Verifier shall concurrently submit a verification report ("Verification Report") to EPA and Respondent. In addition, the Respondent shall ensure that the Verifier concurrently shares any draft or preliminary findings or reports in any format (electronic or paper) with EPA and Respondent.

- i. The Verification Report shall include all findings and monitoring results of the Verifier.
- ii. The Verifier shall provide copies of all documents reviewed and identify all Facility personnel interviewed in support of the Verification Report.
- iii. Respondent shall require the Verifier to include in any Verification Report submitted to EPA pursuant to this Order a certification that the Verifier has remained in compliance with all of the conditions set forth in this paragraph, including that the Verifier conducted the verification independent from any influence by Respondent.

e. The Verification Report, or any information developed or findings of the Verifier, shall not be subject to any privilege or protection, excluding any protections that may be asserted by the Respondent as necessary to protect any Confidential Business Information (CBI) pursuant to the procedures specified by 40 CFR Part 2, Subpart B. In the event Respondent seeks to protect any CBI, Respondent will notify the Verifier of any CBI at the time of the onsite visit to each facility by Verifier.

f. Respondent shall remedy and/or correct all findings identified in the Verification Report as expeditiously as possible or as otherwise agreed to by EPA.

g. Within 30 days of the submission of the Verification Report to Respondent and EPA, Respondent shall submit to EPA a response to all findings set forth in the Verification Report. In the response, Respondent shall describe each completed or proposed action to correct each finding identified in the Verification Report submitted to EPA, including the date(s) that such corrections occurred or are scheduled to occur. The Respondent's response to the Verification Report shall include a timeline of events that have occurred to complete these actions. The timeline must identify the date of starting the assessment, each date each facility was assessed, date of identified finding, date of submission of report to Respondent and EPA, date of corrective actions, date of completion of assessment, etc.

h. Nothing in the Verification Report, including any findings, the observations or assessment by the Verifier, or any subsequent response(s) by Respondent shall be used as an admission against Respondent. However, to the extent that the Verification Report

identifies noncompliance with Respondent's NPDES permits or the CWA, or Respondent fails to correct such noncompliance as indicated in Respondent's response to the Verification Report, EPA reserves the right to take action to require correction of the findings and nothing in this Order, including this subparagraph, shall affect EPA's authority under the CWA or other applicable law. EPA shall consider Respondent's agreement to the retention of the Verifier and preparation of the Verification Report and any good-faith efforts to correct such potential findings in determining any potential EPA enforcement response and any potential penalty assessed. Respondent does not admit any liability and reserves all rights and defenses it has with respect to the findings and any underlying facts identified in the Verification Report.

63. Based on the violations identified at the Centerville Quarry, EPA believes similar violations may be present at Respondent's other quarry facilities. Third Party Verification shall be conducted at the Respondent's six quarries in Kansas as follows:

- a. Whitaker Companies, Winfield Quarry, Permit No. KS0090301;
- b. Whitaker Company, Cedarvale Quarry #1, Permit No. KS0085332;
- c. Whitaker Companies, Inc., Garnett Quarry, Permit No. KS0080420;
- d. Whitaker Aggregates, Inc., Mound City Quarry, Permit No. KS0092983;
- e. Whitaker Aggregates, Inc., Stark Quarry, Permit No. KS0099061; and
- f. Whitaker Companies, Inc., Welda Quarry, Permit No. KS0116025.

#### **Reports/Submissions**

64. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 67 below, shall be submitted by electronic mail to:

acord.angela@epa.gov

Angela Acord, or her successor  
U.S. Environmental Protection Agency – Region 7  
Water, Wetlands and Pesticides Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

65. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

66. All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Jaime Gaggero, Director  
Kansas Department of Health and Environment  
Bureau of Water  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367

67. Each submission required by this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

68. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

69. 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. The EPA retains the right to seek any and all remedies available under Sections 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 the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

#### **Access and Requests for Information**

70. Nothing in this Order shall limit the 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**

71. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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**

72. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

### **Termination**

73. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

**For the Complainant, U.S. Environmental Protection Agency:**

Issued this 14<sup>TH</sup> day of DECEMBER, 2017.



Jeffery Robichaud  
Acting Director  
Water, Wetlands and Pesticides Division



Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel

For the Respondent, Whitaker Aggregates, Inc.:

*Curt Whitaker*  
Signature

12.12.17  
Date

CURT WHITAKER  
Name

President  
Title

**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 Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

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

Curtis D. Whitaker, President  
Whitaker Aggregates, Inc.,  
555 Delaware Road  
Humbolt, Kansas 66748

and via first class mail to:

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

9.18.17

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature