

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2017-0202
Benton's Sand and Gravel, Inc.	)	
Cedar Falls, Iowa	)	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 Benton's Sand and Gravel, Inc. ("Respondent"), a corporation under the laws of the state of Iowa. Respondent is the owner and/or operator of a facility located within Black Hawk County, in Cedar Falls, Iowa.

3. The EPA, together with 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 on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent 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 on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, 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 on Consent, 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 on Consent, 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, mineral industry, including SIC code 1442. *See* 40 C.F.R. § 122.26(b)(14)(iii). SIC code 1442 specifically includes establishments primarily engaged in operating sand and gravel pits and dredges, and in washing, screening, or otherwise preparing sand and gravel for construction uses.

12. The Iowa Department of Natural Resources (“IDNR”) is the state agency within the state of Iowa 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 facility that dredges, stockpiles, and supplies sand, gravel, stone, recycled asphalt and concrete ("facility" or "site"), operating under SIC code 1442, located at 905 Center Street, Cedar Falls, Iowa 50613.

16. Snag Creek flows through the center of the facility property. Stormwater, snow melt, surface drainage and runoff water leave Respondent's site through one of two outfalls and flow east to ponds connected to Snag Creek, which flows to the Cedar River.

17. Stormwater from the site contains "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. 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. Snag Creek, ponds connected to Snag Creek, and the Cedar 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. 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 October 1, 1992, IDNR granted authorization to the facility under Iowa General Permit No. 3, authorization number 0907-0941, for discharges of stormwater runoff to Snag Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The facility has received continuing coverage under the permit through September 30, 2021 (hereinafter "NPDES Permit").

24. On December 7, 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.

25. During the Inspection, the EPA inspector toured the facility, observed discharge locations, and photographed various stormwater-related areas.

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

27. Following the Inspection, by email dated December 14, 2016, the Respondent submitted a copy of the facility's stormwater pollution prevention plan ("SWPPP") dated December 30, 2013, and copies of monitoring records and site inspection reports to the EPA inspector.

28. A copy of the Inspection report was sent to Respondent by the EPA by letter dated March 13, 2017.

### **EPA's Findings**

#### **Count 1 Unauthorized Discharges**

29. The facts stated in Paragraphs 1 through 28 above are re-alleged and incorporated herein by reference.

30. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with an NPDES permit. Part III.A of Respondent's NPDES Permit requires that discharges covered by the permit shall be composed entirely of stormwater. Part III.C requires that facilities implement practices that reduce pollutants in stormwater discharges.

31. During the EPA Inspection, the inspector observed sediment in Outfall No. 1 and lack of controls for the facility's outfalls and material stockpiles in close proximity to the outfalls and waters connected to Snag Creek. Observations and information obtained during the EPA Inspection confirmed that Respondent failed to implement practices to reduce pollutants in stormwater discharges, as alleged in further detail below.

32. Based on the size of the facility, the distance from the facility to Snag Creek and waters connected to Snag Creek, the slope and condition of the land across that distance, and failure to implement practices to reduce pollutants in stormwater discharges, stormwater containing pollutants from the facility will discharge into Snag Creek during significant precipitation events. Unauthorized discharges are violations of the conditions of Respondent's NPDES permit and Sections 301(a) and/or 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

#### **Count 2 Inadequate SWPPP / Failure to Update SWPPP**

33. The facts stated in Paragraphs 1 through 32 above are re-alleged and incorporated herein by reference.

34. Part III.C.4.A of Respondent's NPDES Permit requires the facility to develop a SWPPP that identifies potential sources of pollution and includes a site map showing the drainage area of each storm water outfall and existing control measures. Parts III.C.2.A. and IV.G of Respondent's NPDES Permit require the SWPPP to be signed by an appropriate person, which for corporations is a principal executive officer of at least the level of vice-president, and Part IV.H requires the signatory to make a certification.

35. Part III.C.3 of Respondent's NPDES Permit requires the permittee to amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the U.S. or if the SWPPP proves ineffective in achieving the general objectives of controlling pollutants in stormwater discharges.

36. Based on observations and information collected from the EPA Inspection and review of Respondent's SWPPP, the SWPPP failed to include required components, including, but not limited to, appropriate signatory, identification of all outfalls, correct sampling locations, and accurate description of conditions and controls on site, requiring amendment of the SWPPP.

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

### **Count 3**

#### **Failure to Implement SWPPP / Failure to Implement Adequate Controls**

38. The facts stated in Paragraphs 1 through 37 above are re-alleged and incorporated herein by reference.

39. Part III.C. of Respondent's NPDES Permit requires the facility to implement the provisions of the SWPPP. Part III.C.4.B of Respondent's NPDES Permit requires the facility to implement storm water management controls appropriate to the identified potential sources of pollutants at the facility.

40. The facility's SWPPP provides that all storage piles will be located away from drainage patterns, if at all possible, and either isolated on gravel from drainage flows or surrounded by erosion controls. The facility's SWPPP further provides for erosion and sediment controls including a five-foot native plant buffer along Snag Creek, silt fences where stormwater drainage becomes established through the buffer, rock ditch checks along the south property, and a sedimentation basin.

41. During the EPA Inspection, the inspector observed several stockpiles in close proximity to the outfalls and lacking controls. The inspector did not observe a native plant buffer, silt fences, rock ditch checks, or other erosion controls in or near the outfalls to waters connected to Snag Creek and did not observe a sedimentation basin on the site.

42. During the EPA Inspection, the inspector observed sediment in Outfall No. 1, indicating that the controls in the SWPPP are not being implemented or are inadequate.

43. Respondent's failure to implement the SWPPP and/or implement adequate stormwater management controls is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4  
Failure to Maintain Records On Site**

44. The facts stated in Paragraphs 1 through 43 above are re-alleged and incorporated herein by reference.

45. Part III.C.2.A of Respondent's NPDES Permit requires the facility to retain the SWPPP on site. Parts III.C.4.B(9), III.C.4.C(3), and V.E of Respondent's NPDES Permit require information describing the quality and quantity of stormwater discharges and inspection and maintenance activities, reports of visual inspections, and records of all monitoring information to be retained as part of the SWPPP for at least three years following the date of the measurement, report, or inspection.

46. At the time of the EPA inspection, the facility's SWPPP, inspection reports, and monitoring records were not available on site.

47. Respondent's failure to retain records on site is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 5  
Failure to Adequately Perform and Document Inspections**

48. The facts stated in Paragraphs 1 through 47 above are re-alleged and incorporated herein by reference.

49. Part III.C.4.C of Respondent's NPDES Permit requires Respondent to conduct and document visual inspections of designated equipment and the plant area at a minimum of once per year. Pursuant to Part III.C.4.C(1), inspections shall include material handling areas and other potential sources of pollution for evidence of pollutants entering the drainage system, structural control measures to ensure that they are operating correctly, and equipment needed to implement the SWPPP. Part III.C.4.C(2) requires that the SWPPP be revised as appropriate based on the results of the inspection. Part III.C.4.C(3) requires that inspections be documented in a report summarizing the scope of the inspection, major observations, and actions taken.

50. A review of inspection reports provided by email after the EPA Inspection showed that Respondent failed to identify and discuss the condition of all BMPs and describe and document corrective actions.

51. Respondent's failure to adequately perform and document inspections is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 6  
Failure to Perform Monitoring and/or Retain Records**

52. The facts stated in Paragraphs 1 through 51 above are re-alleged and incorporated herein by reference.

53. Part V.B.3 of Respondent's NPDES Permit requires facilities with stormwater discharge associated with industrial activity from construction sand and gravel to measure total suspended solids ("TSS") and nitrate plus nitrite nitrogen, together with specified information regarding the sample and conditions during the sampling, at least annually. The facility must sample stormwater discharge from each outfall, unless the facility complies with the requirements of Part V.B.5 to demonstrate that one outfall is a representative discharge.

54. Parts V.E and VI.N of Respondent's NPDES Permit require the permittee to retain records of all monitoring information for a period of at least three years from the date of measurement or for the duration of the permit, whichever is longer.

55. A review of monitoring records provided by email after the EPA Inspection showed that in 2016, only one sample was taken and the record did not report information required to establish it as representative of both outfalls. The record also failed to identify which outfall was sampled or to include a complete laboratory report. No monitoring records were available for years 2014 and 2015.

56. Respondent's failure to perform monitoring, properly perform monitoring, and/or to retain monitoring records is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 7  
Failure to Conduct Employee Training**

57. The facts stated in Paragraphs 1 through 56 above are re-alleged and incorporated herein by reference.

58. Part III.C.4.B(8) of Respondent's NPDES Permit requires the SWPPP to identify periodic dates for employee training and requires training to inform all personnel of the goals of the SWPPP and to address such topics as spill response, good housekeeping, and material management practices.

59. The facility's SWPPP provides that employee training will be completed on a yearly basis and includes a blank training log.

60. During the EPA Inspection, the inspector noted that there were no records of employee training available.

61. Respondent's failure to conduct employee training is a violation of the conditions of Respondent's NPDES 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**

62. 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 sixty (60) days is a reasonable time for Respondent to achieve compliance with the terms and conditions of its Permit.

#### **Order for Compliance on Consent**

63. 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.

64. In accordance with this Order, the Respondent shall take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its industrial stormwater NPDES Permit, including, but not limited to:

- a. Revise the facility's SWPPP to meet all applicable requirements of the NPDES Permit;
- b. Install appropriate stormwater management controls to prevent the discharge of pollutants and conduct proper operation and maintenance at the facility as required by the NPDES Permit and described in the revised SWPPP;
- c. Conduct and document visual inspections in accordance with the NPDES Permit;
- d. Perform monitoring and retain records of all monitoring information as required by the NPDES Permit; and
- e. Conduct employee training in accordance with the NPDES Permit and as scheduled by the revised SWPPP.

65. By no later than sixty (60) days from the effective date of this Order, the Respondent shall submit a written report to provide the following:

- a. A copy of the updated and revised SWPPP for the facility;
- b. A copy of facility inspection reports that have been conducted since the date of the EPA Inspection; and
- c. A written description and photo documentation, if appropriate, of all actions taken to date to achieve compliance with the NPDES Permit.



66. The EPA may, after review of the SWPPP, inspection reports, and description of actions taken submitted by Respondent pursuant to Paragraph 65, provide written comments and suggestions regarding such submittals. Review and comment on the SWPPP or other submissions by the EPA does not relieve Respondents of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

67. If Respondent reasonably believes it is not technically able to complete all actions necessary to construct or install any stormwater control structures required by Paragraph 64 by sixty (60) days from the effective date of this Order (the "reporting deadline" in Paragraph 65), Respondent may submit a written request to the EPA by no later than fifteen (15) days prior to the reporting deadline for an extension of time to install such structure(s). The request must include a description of the specific structure(s) for which the extension is being sought, an explanation of the reason for the delay, and a date certain by which the structure(s) will be completed.

68. Any decision by EPA regarding a request for an extension of time pursuant to Paragraph 67, above, will be made in writing and, if granted, will set forth the new compliance date for the structure(s) in question. The decision by EPA regarding the extension shall not be subject to appeal; however, EPA will not unreasonably withhold approval.

69. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

### **Reports/Submissions**

70. *Semi-Annual Reporting.* In addition to the report required by Paragraph 65, above, Respondent shall submit semi-annual reports describing the actions it has taken to ensure continued compliance with the terms of its Permit and this Order. These reports are due six (6) months, twelve (12) months, and eighteen (18) months, respectively, from the reporting deadline in Paragraph 65. Each report shall include, at a minimum:

- d. A description of implementation and/or revision of the SWPPP during the previous six (6) month period;
- e. A description of work and other actions taken to construct the structural controls and/or implement other controls described in Paragraph 64, above, in the previous six (6) month period; and
- f. Copies of all relevant documentation regarding the activities described pursuant to subparagraphs (a) and (b), including, but not limited to, inspection reports and monitoring records.

71. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 74 below, shall be submitted by electronic mail to:

sans.cynthia@epa.gov

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

72. 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.

73. All documents required to be submitted pursuant to this Order shall also be submitted by mail to IDNR to the address provided below:

Joe Sanfilippo, or his successor  
Iowa Department of Natural Resources – Field Office 1  
909 West Main Suite 4  
Manchester, Iowa 52057.

74. Each submission requirement of 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**

75. 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.

76. 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**

77. 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**

78. 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**

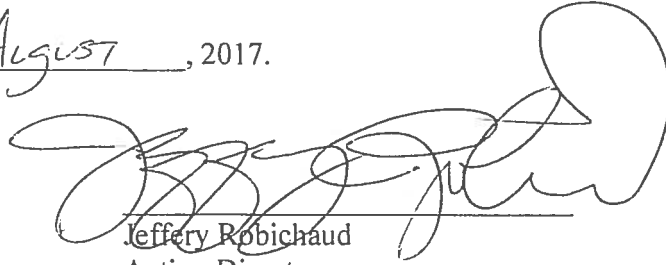
79. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

#### **Termination**

80. 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 11<sup>th</sup> day of August, 2017.

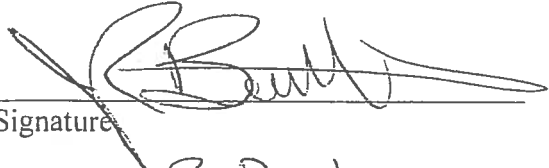


Jeffery Robichaud  
Acting Director  
Water, Wetlands and Pesticides Division

Shane E. C. McCain

Shane E. C. McCain  
Assistant Regional Counsel  
Office of Regional Counsel

For the Respondent, Benton's Sand and Gravel:

  
Signature \_\_\_\_\_ Date 8/7/17

John R. Benton  
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:

John R. Benton  
President/Registered Agent  
Benton's Sand and Gravel, Inc.  
905 Center Street  
Cedar Falls, Iowa 50613

And via first class mail to:

Joe Sanfilippo  
Iowa Department of Natural Resources – Field Office 1  
909 West Main Suite 4  
Manchester, Iowa 52057

8/14/17

Date

Shane McLoon

Signature