

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

2018 NOV 14 AM 8:13

IN THE MATTER OF )  
 )  
 ) Docket No. CWA-07-2018-0329  
 )  
 Bruening Rock Products, Inc. )  
 )  
 ) Respondent. ) FINDINGS OF VIOLATION  
 ) AND 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 are made and an Administrative Order for Compliance ("Order") is 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 Bruening Rock Products, Inc. ("Respondent").

**Statutory and Regulatory Framework**

3. The following Findings of Violation and Order for Compliance ("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 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.

4. Respondent Bruening Rock Products, Inc. is a corporation chartered under the laws of the State of Iowa. Respondent or its affiliated entities are the owner and/or operator of the S&S Mine, which is located to the southeast of the city of Knoxville, Marion County, Iowa.

5. The EPA and Respondent hereby 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."

6. It is the Parties' intent through entering into this Order to address noncompliance by the Respondent for violations of its effective National Pollutant Discharge Elimination System

("NPDES") permit and Respondent's failure to obtain permit authorization for other process wastewater and stormwater discharges. As set forth in this Order on Consent, the Parties have reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

7. 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.

### **General Findings**

8. Bruening Rock Products, Inc. is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. At all times relevant to this Order, Respondent or its affiliated entities was, and still is, the owner and/or operator of the S&S Mine in Marion County, Iowa ("Facility"). The Facility is approximately 55 acres and includes a sub-surface limestone mine, a wash plant, a rock crushing operation, and several product stockpiles on the surface. The Facility is located at 1746 Highway 14, Knoxville, Iowa 50138.

10. An unnamed tributary of English Creek and English Creek flow along the north side of the property. The unnamed tributary flows west to east just north of the north stockpile area and flows for approximately ¼ mile then enters English Creek. Mine dewatering wastewater and surface runoff from some areas of the Facility drain into a two-stage treatment lagoon, which discharges via an outfall (001) to English Creek. Surface runoff of stormwater from other portions of the Facility drain directly into English Creek or the unnamed tributary.

11. The Respondent's facility is a "point source" that "discharges pollutants" to "navigable water" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

12. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*

13. Discharges from Outfall 001 from the Facility's lagoon treatment system are authorized under the authority of the Iowa site specific NPDES permit number IA-0084051 ("Wastewater Permit"), issued to Respondent on August 1, 2012, pursuant to the authority of Section 402 of the CWA, 33 U.S.C. § 1342. The Permit expired on July 31, 2017, and has been

administratively extended. The Permit does not address or authorize stormwater runoff from the surface operations at the Facility.

14. 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.

15. 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.

16. 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.

17. 40 C.F.R. § 122.26(b)(14)(iii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from “mining” facilities classified as Standard Industrial Classification 1422 – Crushed and Broken Limestone.

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

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

20. 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).

21. Respondent’s discharge of pollutants 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.

22. IDNR issued and implemented “General Permit No. 3” (“SW General Permit”) for stormwater discharges associated with construction activity for Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Concrete Sand & Gravel Facilities. The most recent 5-year permit has an effective date of October 1, 2017, and an expiration date of October 1, 2022. Respondent has been required to obtain the required stormwater permit at all times relevant to this Order.

23. Any individual seeking coverage under SW General Permit No. 3 is required to submit a Notice of Intent to IDNR in accordance with the requirements of Part II.C of the SW General Permit. As required by Section III.C.1 of the SW General Permit, a Stormwater Pollution Prevention Plan, which includes at least the minimum requirements set forth in Section

III.C.4 of the SW General Permit, must be completed and maintained on site and fully implemented concurrently with operations at the Facility before the Notice of Intent is submitted to IDNR.

24. On or about April 30, 2018 through May 2, 2018, an EPA representative performed a Compliance Sampling Inspection (hereafter “Inspection”) of the Respondent’s facility to evaluate the Respondent’s compliance with its NPDES Wastewater Permit and the CWA. During the Inspection, the inspector reviewed the Respondent’s records and conducted a visual inspection of the Respondent’s facility and collected composite samples. A Notice of Potential Violation (“NOPV”) was issued at the conclusion of the Inspection. A copy of the inspection report was sent to Respondent by letter dated June 13, 2018 which identified the violations including those described below.

**FINDINGS OF VIOLATION**

**Count 1**

**Effluent Limitation Violations**

25. The facts stated in Paragraphs 1 through 24 above, are hereby incorporated by reference.

26. As set forth in Table 1 below, Page 3 of the Wastewater Permit includes interim and final effluent limitations for Outfall 001. The Wastewater Permit states that interim limits start August 1, 2012 and end July 31, 2017, with the final limits effective after July 31, 2017. While interim TSS, pH and sulfate limits were effective immediately upon issuance of the Wastewater Permit, the Wastewater Permit did not require Respondent to comply with the final sulfate limits until July 31, 2017. The interim and final limits for pH and TSS are the same.

Table 1:

<b>Pollutant Parameter</b>	<b>Type of Limit</b>	<b>7 Day Average/ Minimum</b>	<b>30 Day Average</b>	<b>Daily Maximum</b>	<b>Units</b>
Total Suspended Solids (“TSS”)	Interim/final		30.0	45.0	Mg/L
pH (minimum-maximum)	Interim/final	6.0		9.0	Standard Units
Sulfate (As SO4)	Final		1514.0	1514.0	Mg/L

27. The Facility’s discharge monitoring reports (“DMRs”) for the period between September 2013 and July 2018 document sample results for effluent discharges with exceedances of the Permit’s interim and/or final effluent limits for TSS in fifteen months, and the effluent limits for SO4 in fifty-two of the fifty-nine months, including seven months after the

deadline for compliance of July 31, 2017, as set forth in Appendix A to this Order below (October 2017, and January, March, April, May, June, and July 2018).

28. EPA's inspector took 24-hour composite samples on May 1 and May 2, 2018. Respondent's effluent exceeded the Permit's daily maximum limit for Sulfates (SO<sub>4</sub>) on both days composite samples were collected. EPA's May 1 sample contained 2,810.0 Mg/L Sulfates (SO<sub>4</sub>) and the May 2 sample contained 2,790.0 Mg/L Sulfates (SO<sub>4</sub>). Additionally, after EPA's inspection and NOPV, EPA acquired Respondent's DMRs for the months of June and July 2018, which documented additional violations of the limits for TSS and SO<sub>4</sub> (as set forth in Appendix A to this Order).

29. Respondent's violations of the Permit's effluent limitations for TSS and SO<sub>4</sub>, as identified in Paragraph 27 and /or 28 above, and Appendix A of this Order, are violations of the terms and conditions of its Permit, issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **Count 2**

#### **Unauthorized Discharges of Process Wastewater and Industrial Stormwater**

30. The facts stated in Paragraphs 1 through 24 above, are hereby incorporated by reference.

31. EPA's inspection documented that a truck washout area in the northwest area of the Facility was operated in a manner that truck washout and stormwater runoff from this area flowed down a hill and into the unnamed tributary of English Creek. Solidified runoff from the washout area was observed in place all the way down the hill's slope to the unnamed tributary of English Creek.

32. Aerial photographs document that from at least September 2010 to the date of EPA's 2018 inspection, stormwater from Respondent's facility discharged into the unnamed tributary of English Creek and/or English Creek.

33. Respondent's discharges of truck washout (process wastewater) and/or industrial stormwater to the tributary of English Creek or English Creek are not authorized by any Permit, and therefore these discharges are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **Count 3**

#### **Effluent Testing Violations**

34. The facts stated in Paragraphs 1 through 24 above, are hereby incorporated by reference.

35. Page 4 of the Wastewater Permit contains the monitoring and reporting requirements. The Wastewater Permit requires monthly 24-hour composite samples be collected for Total Suspended Solids and weekly 24-hour composite samples be collected for Sulfate as SO<sub>4</sub>.

36. The EPA inspection revealed that prior to the dates of EPA's inspection, the Facility had only taken monthly grab samples for Total Suspended Solids and weekly grab samples for Sulfate as SO<sub>4</sub>, instead of 24-hour composite samples, as required by the Wastewater Permit.

37. Respondent's violation of the sampling requirements of the Wastewater Permit, as identified in Paragraph 36 above, is a violation of the terms and conditions of its Wastewater Permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations.

### **Reasonable Time to Achieve Compliance**

38. 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 the Respondent must immediately comply with all sampling, analysis, effluent limitations if its Permit, and all requirements of Section 405 of the CWA, 33 U.S.C. § 1345, and that approximately three (3) months from the Effective Date of this Order is a reasonable time for Respondent to repair, replace or construct all wastewater treatment improvements, construct any necessary stormwater control structures and apply for a NPDES stormwater permit and acquire equipment necessary to achieve compliance with the sampling and effluent requirements of its Wastewater Permit.

### **ORDER FOR COMPLIANCE**

39. Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

40. In accordance with this Order, the Respondent shall immediately:

- a) operate and maintain the lagoon discharging from Outfall 001 in a manner to prevent numerical permit limit exceedances;
- b) cease all unauthorized discharges of process wastewater;
- c) obtain authorization for discharges of industrial stormwater by submittal of a Notice of Intent to discharge to IDNR; and
- d) comply with all influent and effluent sampling, analysis, reporting and recordkeeping requirements of its Permit.

41. By no later than December 1, 2018, Respondent shall submit to the EPA, for review and comment as set forth in Paragraph 42, below, a Compliance Plan to achieve and maintain compliance with all conditions and limitation of the Wastewater Permit and obtain authorization for discharges of stormwater as soon as possible, but no later than February 1, 2019. The required Compliance Plan shall specifically address and describe the following actions anticipated to achieve compliance:

- a) a description of all additional treatment technology needed to achieve compliance with the Permit's limits for TSS and SO<sub>4</sub>; and
- b) a description of all additional engineering controls required to control discharges of process wastewater and industrial stormwater.

42. The Compliance Plan submitted by the Respondent pursuant to Paragraph 41, above, will be reviewed by the EPA for completeness and sufficiency, and shall be managed as follows:

- a) if the EPA determines the Compliance Plan is complete and sufficient, and the schedule is appropriate, considering the work to be performed, the Respondent will be notified by the EPA, by mail or email, to promptly implement the Plan, according to its schedule.
- b) if the EPA notifies the Respondent, by mail or email, that further revisions are needed, the Respondent shall make such revisions and resubmit the proposed changes to the EPA within thirty (30) calendar days of receipt of EPA's notice.
- c) if the Respondent believes it needs additional time to complete, prepare or revise the Compliance Plan, the Respondent shall submit a request by mail or email to Cynthia Sans, at the address identified in Paragraph 45 below, indicating the basis for the request and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to the Respondent by mail or email.

### **Semiannual Reporting**

43. Beginning no later than December 1, 2018, and continuing thereafter on June 1 and December 1 each year until this Order is Terminated pursuant to Paragraph 56 the Respondent shall provide to the EPA, with a copy to IDNR, a report containing, at a minimum, the following information for the previous six (6) months:

- a) a copy of all DMRs and supporting documentation;
- b) a detailed description of all actions taken to achieve compliance pursuant to the Compliance Plan;
- c) a description of all work planned for the next 6-month reporting period pursuant to the Compliance Plan; and
- d) a copy of all site inspections, stormwater monitoring, annual comprehensive evaluation(s), and employee training completions the previous six months.

### **Certification**

44. Each submission made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

*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 submissions of false information.*

### **Submittals**

45. All documents required for submittal to the EPA shall be sent by certified mail, return receipt requested, or by email to:

Cynthia Sans, Compliance Officer  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
11201 Renner Blvd  
Lenexa, Kansas 66219  
Sans.Cynthia@epa.gov

46. 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.

47. All documents required to be submitted to IDNR pursuant to this Order shall be submitted by mail to:

Ted Petersen, Supervisor  
Iowa Department of Natural Resources Field Office #5  
7900 Hickman Rd., Ste. 200  
Windsor Heights, Iowa 50324

## **General Provisions**

### **Effect of Compliance with the Terms of This Order**

48. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of liability for its responsibility to obtain and comply with any required local, state and/or federal permits.

49. Respondent shall comply with all other applicable laws, regulations, standards and requirements contained in any applicable local, state and federal pretreatment laws, regulations, standards and requirements including any such laws, regulations, standards or requirements that may become effective during the term of this Order.

50. 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 Section 309 of the CWA, 33 U.S.C. § 1319, 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**

51. 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**

52. 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.

### **Parties Bound**

53. This Order shall apply to and be binding upon the Respondent, his agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

### **Failure to Comply**

54. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court for the Southern District of Iowa may impose such penalties if, after notice and

opportunity for a hearing, the court determines that you have violated the CWA as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

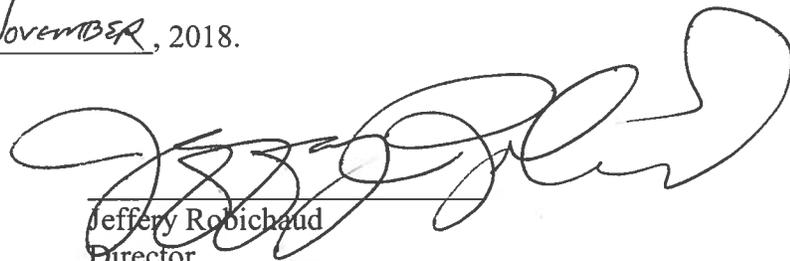
#### Effective Date

55. The terms of this Order shall be effective and enforceable against Respondent upon signature by the EPA Region 7's, Director of the Water, Wetland and Pesticides Division.

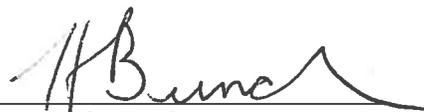
#### Termination

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

Issued this 8<sup>TH</sup> day of NOVEMBER, 2018.



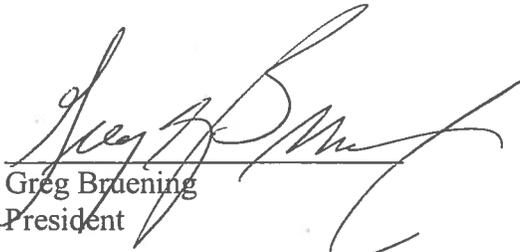
Jeffery Robichaud  
Director  
Water, Wetlands and Pesticides Division



Howard Bunch  
Senior Counsel  
Office of Regional Counsel

For Bruening Rock Products, Inc.

Date: 11/1/18

By:   
Name: Greg Bruening  
Title: President

**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, U.S. Environmental Protection Agency, 11201 Renner Blvd., Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Mr. Greg Bruening  
Bruening Rock Products – S&S Mine  
900 Montgomery Street  
Decorah, Iowa 52101

and by first class mail to:

Ted Petersen, Supervisor  
Iowa Department of Natural Resources, Field Office #5  
7900 Hickman Rd., Ste. 200  
Windsor Heights, Iowa 50324

Date

11/13/2018

