

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

09 OCT 23 AM 10:42

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Arps Red-E-Mix, Inc.)
1479 State Street)
Blair, Nebraska 68008)

Respondent)

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

) Docket No. CWA-07-2010-0001

) 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 Arps Red-E-Mix, Inc., a corporation incorporated under the laws of the State of Nebraska (Nebraska) and authorized to conduct business in Nebraska.

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 to 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 Nebraska Department of Environmental Quality (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The NDEQ implemented a General Permit for the discharge of stormwater under the NPDES, Permit No. NER000000 on April 29, 1998. This permit was administratively extended on August 28, 2002. The permit governs stormwater discharges associated with industrial activity.

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 Arps Red-E-Mix, Inc., located at 1479 State Street, Blair, Nebraska (the Site) with a SIC code of 3273.

13. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into South Creek. 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 “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Stormwater runoff from Respondent’s construction site 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 applied for and was issued NPDES permit coverage under the general permit described in paragraph 10 above. NDEQ assigned Respondent Permit Authorization No. NER000739 on April 29, 1998.

20. On May 21-22, 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 Develop and Implement an Adequate Stormwater Pollution Prevention Plan

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Section D, subsection 1.a of Respondent’s permit requires Respondent to develop, maintain, and implement a Stormwater Pollution Prevention Plan (SWPPP) for its facility.

23. Section D, subsection 2.a of Respondent’s permit requires Respondent’s SWPPP to include “Facility Map(s),” which “shall identify facility structures, pollutant sources, outfalls, monitoring points, run off drainage areas and ground cover characteristics. . . .”

24. Section D, subsection 2.b of Respondent’s permit requires Respondent’s SWPPP to identify all outfalls.

25. The inspection, referenced in paragraph 20 above, revealed an area at the southwest corner of the Site where runoff exits the property and collects between the railroad tracks and the Site’s south fence.

26. Section D, subsection 2.e of Respondent’s permit requires Respondent’s SWPPP to include “an employee education program that ensures the SWPPP will be effectively implemented.”

27. The inspection, referenced in paragraph 20 above, revealed that Respondent's SWPPP did not address employee training.

28. Respondent's failure to develop an adequate SWPPP is a violation of Respondent's Permit, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Failure to Document Semi-Annual Inspections and Maintain Inspection Reports

29. The facts stated in paragraphs 11 through 20 above are herein incorporated.

30. Section D, subsection 3.a of Respondent's permit requires Respondent to inspect the Site "at least semi-annually to ensure that the SWPPP is being effectively carried out."

31. Section D, subsection 3.b of Respondent's permit requires Respondent to "maintain records of the facility inspections for a period of at least three years." These records must include, at a minimum:

- a. Who conducted the inspections;
- b. When the inspections were conducted;
- c. The findings of the inspections;
- d. Any corrective actions taken as a result of the inspections; and
- e. When the corrective actions were implemented.

32. The inspection, referenced in paragraph 20 above, revealed that Respondent had not documented and maintained semi-annual facility inspections as required.

33. Respondent's failure to document semi-annual facility inspections and maintain the inspection reports is a violation of Respondent's Permit, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance

34. 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 35 through 37.

35. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary 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 the permit.

36. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

37. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

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

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

39. A copy of documents required to be submitted to NDEQ by this Order shall be submitted to NDEQ by mail to:

Mr. Steve Goans
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509-8922.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

40. 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.

41. 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 CWA for any violation whatsoever.

Access and Requests for Information

42. 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

43. 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.

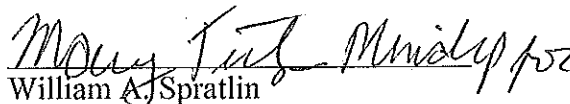
Effective Date

44. 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

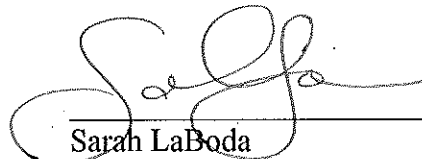
45. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 23 day of Oct, 2009.


William A. Spratlin

Director

Water, Wetlands and Pesticides Division



Sarah LaBoda

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:

Mr. Michael D. Arps, President
Arps Red-E-Mix, Inc.
250 West Vine
Fremont, Nebraska 68025

And via first class mail to:

Mr. Pat Rice
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509.

10/23/09
Date

Clara A. Moreno