

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
) Docket No. CWA-07-2007-0054  
)  
Oak Mill, Inc. )  
P.O. Box 201 ) FINDINGS OF VIOLATION,  
North Aurora, IL 60542 ) ORDER FOR COMPLIANCE  
)  
Respondent )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
\_\_\_\_\_ )

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 VII and further delegated to the Director of Region VII's Water, Wetlands and Pesticides Division.

2. Respondent is Oak Mill, Inc., a company registered under the laws of Missouri and authorized to conduct business in the State of Missouri.

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 storm water. Section 402(p) of the CWA, requires, in part, that a discharge of storm water 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 storm water 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 storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity,” in part, 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 materials storage areas at an industrial plant.” A facility classified as Standard Industrial Classification 28 is considered to be engaging in “industrial activity” for purposes of paragraph (b)(14)(ii).

9. The Missouri Department of Natural Resources (MDNR) is the state agency with authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

#### Factual Background

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

11. At all times relevant to this action, Respondent was the owner and/or operator of an industrial plant, engaged in the manufacturing, processing or storage of vegetable oil, known as Oak Mill, Inc., located at 2731 S. 2<sup>nd</sup> Street, Saint Joseph, Missouri (the Site) with a SIC code of 2899.

12. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into a tributary of the Missouri River. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

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

14. The Site has “storm water 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).

15. Respondent discharges pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C. § 1362.

16. Storm water runoff from Respondent’s industrial lagoon 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).

17. 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.

18. On October 6, 2005, MDNR performed an inspection of the Site. The purpose of the inspection was to evaluate the treatment and disposal of storm water at the site in accordance with the CWA.

19. At the time of the October 6, 2005 inspection, Respondent did not have a General Permit, and had not submitted a Notice of Intent (NOI) to apply for a permit.

20. MDNR instructed Respondent to obtain a site-specific industrial storm water permit in a letter dated December 29, 2006. MDNR provided Respondent with application forms and procedures. By letter dated February 13, 2007, Respondent stated to MDNR that it would apply for a storm water permit. However, as of June 21, 2007, Respondent has not applied for or obtained a storm water permit from MDNR.

#### Findings of Violation

#### **Discharge Without a Permit**

21. The facts stated in paragraphs 10 through 20 above are herein incorporated.

22. Missouri State Operating General Permit number MO-R23A000 requires facilities with SIC #2899, chemical and lubricant manufacturing, to apply and obtain a permit authorizing the discharge of storm water runoff to waters of the state of Missouri.

23. Respondent has not applied for or been issued an NPDES permit and therefore was not and is not authorized to discharge storm water from the site.

24. Respondent's past and ongoing discharge of pollutants to a water of the United States without a NPDES permit is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a) and 1342(p), and implementing regulations.

#### Order For Compliance

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

26. Respondent shall take corrective actions to eliminate and prevent recurrence of the violation cited above, and to come into compliance with the Clean Water Act, including but not limited to the following items:

- a) Within seven days of the effective date of this Order, submit a complete application for a site-specific storm water permit to the Missouri Department of Natural Resources (MDNR), with a copy to EPA;
- b) Fully comply with all terms of any storm water permit issued to Respondent by MDNR;
- c) Submit to EPA a copy of any Storm Water Pollution Prevention Plan prepared by Respondent pursuant to the terms of any storm water permit issued to Respondent by MDNR, within ten days of when Respondent's permit requires the Plan to be developed; and
- d) Within ten days of the effective date of this Order, develop and implement an Interim Measures Plan describing Best Management Practices that Respondent shall immediately implement to minimize the discharge of pollutants due to storm water runoff. The plan shall be developed in accordance with EPA guidance manual "Storm Water Management for Industrial Activities" (EPA 832\_R-92006, 9/92). Respondent shall submit a copy of the Interim Measures Plan to EPA within twenty days of the effective date of this Order. If EPA identifies deficiencies in the Interim Measures Plan, EPA will provide written comments on the Plan to Respondent, identifying any revisions to the Plan that are necessary in order to minimize the discharge of pollutants due to storm water runoff. Respondent shall revise the Plan in accordance with EPA's comments and implement the revised Plan.

### **Submissions**

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

Ms. Cynthia Sans  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101.

28. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Dept. of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.

### General Provisions

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

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

30. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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(b), (c), (d) or (g) of the Act, 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

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

### Severability

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


### Effective Date

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

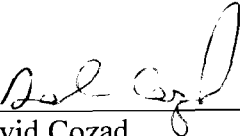
### Termination

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

Issued this 9<sup>th</sup> day of July, 2007.

  
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William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

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David Cozad  
Deputy Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

IN THE MATTER OF Oak Mill, Inc., Respondent  
Docket No. CWA-07-2007-0054

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation, Order for Compliance was sent this day in the following manner to the addressees:

Copy hand delivered to:

David Cozad  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert K. Arundale II  
Vice President  
Oak Mill, Inc  
PO Box 201  
North Aurora, Illinois 60542

July 10, 2007  
Dated



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Anna Rock  
Paralegal Specialist