

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2016-0063
<b>Iowa City Ready Mix, Inc.</b>	)	
	)	
	)	
	)	
Respondent	)	FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE
	)	
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	

**Preliminary Statement**

1. This Administrative Order for Compliance (Order ) is issued by the United States Environmental Protection Agency (EPA) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the United States Environmental Protection Agency to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent in this case is Iowa City Ready Mix, Inc. ("Respondent").

**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 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 with 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, the 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) require 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 discharges from facilities classified as Standard Industrial Classification SIC code 3273 (Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Concrete Sand & Gravel Facilities).

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

10. IDNR issued and implemented NPDES General Permit No. 3 (General Permit) for stormwater discharges associated with industrial 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, 2012, and an expiration date of October 1, 2017.

11. Any individual seeking coverage under NPDES General Permit No. 3 is required to submit a Notice of Intent (NOI) to IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1 of the General Permit, a Stormwater Pollution Prevention Plan (SWPPP), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site and fully implemented concurrently with operations at the facility before the NOI is submitted to IDNR.

### **General Factual and Legal Allegations**

12. Respondent is and was at all times relevant to this action the owner and/or operator of a facility located at 1854 South Riverside, Iowa City, Iowa 52244 (Facility), operating under SIC code 3273. The Facility produces and transports ready mixed concrete to commercial and residential customers in the Iowa City area. On site storage of raw material consists of sand, lime stone, cement, fly ash, and various concrete mixtures that are brought into the site via trucks. The main source of pollutants in stormwater runoff is from truck washout and excess water draining from the mixing trucks during loadout. The Facility is

designed with a concrete truck wash pad (wash pad) where runoff from truck washout should be directed to a settling basin (settling basin) which discharges to the Iowa River.

13. The Iowa River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

14. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s facility and discharge directly into the Iowa River. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

16. The Facility 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).

17. 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).

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. In response to a NOI to discharge submitted by Respondent, IDNR extended authorization under NPDES General Permit No. 3, Permit Authorization No. IA-1724-1607 (hereafter “Stormwater Permit”), to Respondent Iowa City Ready Mix, Inc, for the Facility.

20. At all times relevant to this action, and upon payment of renewal fees and submission of applications for renewal, IDNR extended authorization under the Stormwater Permit to Respondent during permit cycles from October 1, 1997 through October 1, 2017. All discharges of stormwater from the Facility associated with industrial activity during this period were required to comply with the terms and conditions of the Stormwater Permit. Respondent has been required to comply with the Stormwater Permit at all times relevant to this Order.

21. IDNR also issued the Facility an individual NPDES permit (Permit No. IA-5225109), issued on April 1, 2013, and due to expire on March 31, 2018). Subject to the effluent limitations and other requirements, this permit authorizes discharges from a single outfall from a four cell settling basin used to store wastewater from cleaning concrete trucks.

22. On or about June 7, 2013 and June 27, 2014, the IDNR performed a wastewater treatment plant inspection at the Facility (IDNR Inspections). One component of the IDNR inspections was to evaluate the facility’s compliance with the CWA, including management of stormwater.

23. During both the 2013 and 2014 IDNR inspections, IDNR's inspector observed and documented the Respondent's failure to implement stormwater management controls and that the washout of trucks was occurring from locations at the Facility other than the washout pad, resulting in discharges of non-stormwater pollutants (including but not limited to concrete truck washout) from various locations at the Facility into the adjacent Iowa River.

24. On September 9, 2015, the EPA performed an inspection of the Facility (EPA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). One component of the EPA Inspection was to evaluate the facility's compliance with the CWA and the conditions of the Stormwater Permit, including its management of stormwater at the Facility.

25. During the 2015 EPA Inspection, EPA's inspector observed and documented Respondent's continued failure to implement stormwater management controls, and that the washout of trucks was occurring from locations at the Facility other than the washout pad, resulting in discharges of non-stormwater pollutants (including but not limited to concrete truck washout) from various locations at the Facility into the adjacent Iowa River.

26. At or near the conclusion of the EPA 2015 Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation (NOPV) identifying issues that may be violations of Respondent's Permits, including but not limited to: failure to develop and implement a SWPPP; failure to conduct preventative maintenance and implement good housekeeping practices; failure to install adequate structural controls to prevent sediment runoff and failure to monitor stormwater discharges associated industrial activity.

### **Findings of Violation**

#### **Count 1 Discharges of Pollutants**

27. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

28. Part III.A. of General Permit No. 3, as authorized and applicable to the Facility, states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water." The Facility's individual Permit (No. IA- 5225109) only authorizes discharges from a single outfall from a four cell settling basin used to store wastewater from cleaning concrete trucks.

29. The IDNR and EPA Inspections, discussed above, documented discharges of pollutants, including but not limited to, direct discharges of wastewater from concrete truck washout in areas that do not flow to the settling basin and discharges of pollutants in stormwater from other industrial activities resulting from failures to implement adequate BMPs. The pollutants discharge from several locations at the Facility into the Iowa River, including through a ditch adjacent to the Facility. The pollutant discharges are not authorized by General Permit No. 3 or the Facility's individual NPDES permit.

30. The discharges of pollutants into a navigable water, as observed and documented by IDNR's and EPA's Inspections, are violations of the terms and conditions of General Permit No. 3 and the individual NPDES permit, and are therefore violations of Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311(a).

**Count 2**  
**Failure to Develop and Implement a SWPPP**

31. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

32. Part III.C. of General Permit No. 3 requires that a SWPPP be developed for each facility covered by the General Permit, and that the SWPPP shall be prepared in accordance with good engineering practices. The SWPPP is required to identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility; and describe and ensure the implementation of practices which will be used to reduce pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the stormwater pollution prevention plan required under this part as a condition of the permit.

33. Part III.C.1. of General Permit No. 3 requires that the SWPPP shall be completed before the Notice of Intent is submitted to the IDNR. Full implementation of the pollution prevention plan is required to be executed concurrently with operations at the subject facility.

34. From at least September 2011 through the date of EPA's 2015 Inspection, Respondent failed to develop and implement a SWPPP for the Facility, in violation of Part III.C.1 of General Permit No. 3.

35. Respondent's failure to develop and implement a SWPPP is a violation of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3**  
**Failure to Implement Adequate Control Measures**

36. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

37. Part III.C.4.B of General Permit No. 3 requires that each facility covered by the permit shall develop a description of stormwater management controls appropriate to the facility, and, implement such controls.

38. Through at least the date of EPA's 2015 Inspection, Respondent failed to implement adequate control measures at several process areas at the facility where non-

stormwater pollutants discharge either into the adjacent ditch which flows to the Iowa River, or directly into the Iowa River. This is a violation of Part III.C.4.B of General Permit No. 3.

39. Respondent's failures to implement adequate control measures are violations of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4**  
**Failure to Conduct Visual Inspections**

40. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

41. Part III.C.4.C of General Permit No. 3, as authorized and applicable to the Facility, requires that qualified personnel visually inspect designated equipment and plant areas at appropriate intervals specified in the SWPPP, but in no case, not less than once a year.

42. Through at least the date of EPA's Inspection, Respondent had failed to perform inspections at the Facility, in violation of Part III.C.4.C of General Permit No. 3.

43. Respondent's failures to conduct inspections at the Facility are violations of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 5**  
**Failure to Conduct Monitoring**

44. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

45. Part V.B.2.B of General Permit No. 3, as authorized and applicable to the Facility, requires that monitoring (i.e., grab samples) shall be conducted at least annually (1 time per year) for each facility.

46. Through at least the date of EPA's Inspection, Respondent had failed to perform any monitoring at the Facility, in violation of Part V.B.2.B of General Permit No. 3.

47. Respondent's failures to conduct monitoring at the Facility is a violation of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Order for Compliance**

48. Based on the Factual Background and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the Respondent is hereby ORDERED to take the actions described below.

49. Respondent shall immediately cease all discharges of non-stormwater pollutants including, but not limited to, concrete truck washout water to waters of the United States that are not expressly authorized under a valid NPDES permit.

50. Within thirty (30) days of the Effective Date, as defined in Paragraph 67 herein, Respondent shall commence actions necessary to correct the deficiencies identified in order to eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit, including, but not limited to:

- a. Develop and implement a SWPPP specific to the site conditions of the Facility that meets all applicable requirements of its NPDES permit included in Part III.C of General Permit No. 3;
- b. Implementation of adequate control measures;
- c. Conduct required monitoring; and
- d. Conduct routine inspections

51. Within thirty (30) days of the Effective Date of this Order, the Respondent shall submit a written report to provide the following:

- a. A copy of the SWPPP developed for the facility that is signed in accordance with Part VI.G. of General Permit No. 3.
- b. A description of all activities initiated to date to achieve compliance with the current NPDES Permit conditions.

52. In the event that Respondent believes that correction of the violations cited herein is not possible within thirty (30) days of the Effective Date of this Order, Respondent shall include in its written report required by Paragraph 51, above, a comprehensive written plan for the correction of any remaining violations. Such plan shall describe in detail, the corrective actions to be taken and why such actions are sufficient to correct the remaining 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.

53. The EPA will review the report, plan and/or schedule submitted by Respondent pursuant to Paragraphs 51 and 52. The EPA will approve these submittals or may comment and require modification and resubmission of a portion or all of the submittals pursuant to Paragraph 54, below. Upon approval, in whole or part, the submittals shall be deemed incorporated into and become enforceable under this Order. Review and comment or approval of a submittal by the

EPA does not relieve Respondent of the responsibility to comply with its NPDES Permit(s), the CWA, applicable State law, or this Order.

54. If required by the EPA pursuant to Paragraph 53 above, within forty-five (45) days of receipt of any written comments from EPA regarding a submittal, Respondent shall make modifications and changes to it as directed by EPA, and resubmit the submittal to the EPA. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

### **Certification**

55. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent and signed by a named Respondent, or by a duly authorized representative of that person, as described at 40 C.F.R. § 122.22, that contains the following certification:

*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.*

### **Submissions**

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

Stephen Pollard, or his designated successor  
Compliance Officer (WENF)  
Water Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

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

Deborah Quade, Supervisor  
IDNR Field Office #6  
1023 West Madison Street  
Washington, Iowa 52353-1623



58. In the event Respondent fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order against the Respondents and/or seek additional penalties against Respondents for such noncompliance with the terms of this Order.

### **General Provisions**

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

59. Compliance with the terms of this Order shall not relieve the 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.

60. 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 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**

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

#### **Severability**

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

#### **Parties Bound**

63. This Order shall apply to and be binding upon the Respondent, its 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**

64. 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 EPA, the United States District Court for the Northern District of Iowa may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act 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.

#### **Judicial Review**

65. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. § 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

#### **Opportunity to Confer**


66. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within ten (10) days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to the EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within twenty (20) days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

#### **Effective Date**

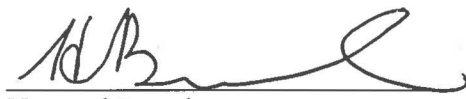
67. The terms of this Order shall be effective and enforceable against Respondent thirty (30) days after receipt of an executed copy of the Order.

**Termination**

68. 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.

  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

10-17-16  
Date:

  
Howard Bunch  
Assistant Regional Counsel  
Office of Regional Counsel

10-17-16  
Date:

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 Blvd., Lenexa Kansas 66219.

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. Duane Tack  
Iowa City Ready Mix, Inc.  
1854 South Riverside  
Iowa City, Iowa 52244

and by first class mail to:

Ted Peterson, Supervisor  
IDNR Field Office #5  
502 East 9th Street  
Des Moines, Iowa 50319

Deborah Quade, Supervisor  
IDNR Field Office #6  
1023 West Madison Street  
Washington, Iowa 52353-1623

10/12/16  
Date

  
Signature