

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2024-0127
BMaKK Corporation)	
)	FINDINGS OF VIOLATION
Respondent)	AND ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

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).

2. The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(a)(3) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the "Complainant") with concurrence of the Regional Counsel.

3. Respondent is BMaKK Corporation, a corporation under the laws of the state of Nebraska, and the owner and/or operator of a facility located at 1440 Read Street, Omaha, Nebraska 68112 ("Facility"), which operates under Standard Industrial Classifications ("SIC") 1429.

4. The EPA, together with 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."

5. It is the Parties' intent through entering into this Order to address noncompliance by the Respondent with its National Pollutant Discharge Elimination System ("NPDES") permit for discharges of industrial stormwater. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

6. 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, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein.

7. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order, 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, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

8. 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.

9. The CWA prohibits the discharge of “pollutants” from a “point source” to a “navigable water,” as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

11. 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 and requires, in part, that a discharge of stormwater associated with an industrial activity comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

12. 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.

13. 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.

14. 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”) Code 1429. *See* 40 C.F.R. § 122.26(b)(14)(iii). SIC code 1429 includes establishments primarily engaged in mining or quarrying crushed and broken stone not elsewhere classified.

15. The Nebraska Department of Environment and Energy (“NDEE”), formerly NDEQ, is the state agency within the state of Nebraska 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.

16. 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.

17. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or condition or limitation of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, requiring such person to comply.

EPA’s General Allegations

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

19. The Facility consists of two parcels of land. The north section of the Facility is approximately 5.75 acres in size consisting of the main process area where waste concrete is received, processed, and stockpiled for sale. The south section of the Facility is approximately 5.75 acres in size and is used to store large amounts of waste concrete for processing. Located at the Facility is an office, maintenance building, fueling area, waste material truck unloading and storage areas, and final product storage areas.

20. The Missouri River flows along the north perimeter of the Facility, separated by a flood levee.

21. Snow melt, surface drainage, and runoff water leave the Facility and discharge into the Omaha Municipal Separate Storm Sewer System (“MS4”) via five stormwater inlets. Four of the MS4 inlets are located along Read Street adjacent to the Facility (Outfalls 01, 02, 03, and 05) and one of the MS4 inlets is located inside the Facility where processed material is stored (Outfall 04).

22. Discharges that enter the MS4 flow into a stormwater detention basin and from the detention basin, discharges are pumped into Carter Lake or to the Missouri River.

23. Carter Lake is an oxbow lake that was created naturally after flooding of the Missouri River in 1877 cut off a bend of the Missouri River, forming Carter Lake.

24. Carter Lake borders Omaha, Nebraska and Carter Lake, Iowa, and forms part of the border between Iowa and Nebraska.

25. Carter Lake is identified as impaired by both Nebraska and Iowa and has a Total Maximum Daily Load (“TMDL”) established. Nebraska aquatic life impairments include chlorophyll a, total nitrogen, and total phosphorus. Iowa impairments include pH for aquatic life and primary contact recreation and transparency for primary contact recreation. Carter Lake is

315 acres with a maximum depth of 25.4 feet and has significant recreational and aesthetic value to the surrounding communities with adjacent homes, golf course, parks, fishing, rowing competitions, canoeing, is identified as a Significant Publicly-Owned Lake by the Iowa Department of Natural Resources (“IDNR”), and has amenities for boating, including public boat ramps and private docks.

26. Carter Lake is an interstate water and a traditional navigable water, and is therefore a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

27. The Missouri River is a traditional navigable water, and is therefore a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

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

30. Stormwater runoff from industrial activity at the 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), and requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

31. The NDEE issues and implements the General NPDES Permit for Storm Water Discharges Associated With Industrial Activity.

32. Any individual seeking coverage under NDEE’s General NPDES Permit for Storm Water Discharges Associated With Industrial Activity is required to submit a Notice of Intent (“NOI”) to the NDEE.

33. The principal requirement of the NPDES permit is for the owner and operator to develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from industrial activities, describe and ensure the implementation of stormwater control measures, including best management practices (“BMPs”), that will be used to reduce the pollutants in stormwater discharge associated with the industrial activities at the Facility and to assure compliance with the terms and conditions of the permit.

34. From April 13, 2017, to September 28, 2022, the Facility was authorized under the General NPDES Permit for Storm Water Discharges Associated With Industrial Activity, NER910000, that had an effective date of July 18, 2016, and expired on March 31, 2022 (“General Permit NER91”).

35. On October 30, 2019, the city of Omaha (“City”) performed a Comprehensive Site Compliance Inspection (“City Site Inspection”) at the Facility and noted multiple General Permit NER91 deficiencies.

36. On March 1, 2022, NDEE notified Respondent that NDEE would be issuing an updated NPDES Industrial Stormwater General Permit to replace General Permit NER91, which would go into effect on April 1, 2022, and Respondent must renew permit coverage under the updated general permit by September 28, 2022.

37. On April 1, 2022, the General NPDES Permit for Storm Water Discharges Associated With Industrial Activity, NER920000 came into effect, with an expiration date of March 31, 2027 (“General Permit NER92”) (Referenced together with General Permit NER91 as “General Permits”).

38. On September 29, 2022, the Facility’s authorization under the General Permit NER91 expired and Respondent failed to renew coverage for the Facility under General Permit NER92.

39. On November 1, 2022, NDEE notified Respondent that coverage under the General Permit NER91 had expired and NPDES permit authorization had been terminated.

40. On November 15, 2022, Respondent submitted the NOI to NDEE.

41. On December 2, 2022, NDEE rejected the NOI and requested Respondent resubmit the NOI due to an inadequate SWPPP and pollutant list.

42. On January 26, 2023, Respondent resubmitted the NOI to NDEE.

43. On September 21, 2023, NDEE rejected the NOI and requested Respondent resubmit the NOI due to the inadequate SWPPP and pollutant list and failure to obtain an environmental review from the Nebraska Game and Parks Commission.

44. On December 21, 2023, Respondent resubmitted the NOI to NDEE and was granted authorization to discharge pursuant to General Permit NER92.

45. On October 5, 2023, the EPA performed an Industrial Stormwater Inspection (“EPA Inspection”) of the Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with the CWA. NDEE was present during the EPA Inspection.

46. During the EPA Inspection, the EPA inspector reviewed Respondent’s available records related to General Permit NER91, toured the Facility, photographed stormwater-related areas, and observed the Facility’s stormwater outfalls and stormwater controls.

47. At the conclusion of the EPA Inspection, the EPA inspector issued Respondent a Notice of Potential Findings (“NOPF”).

48. On October 21, 2023, Respondent provided the EPA with a response to the NOPF.

49. On December 12, 2023, the EPA sent Respondent a copy of the report for the EPA Inspection (“EPA Inspection Report”).

50. On or around April 17, 2024, the City performed an inspection of the Facility and the MS4 inlets adjacent to the Facility (“MS4 Inspection”).

51. During the MS4 Inspection, the City observed and documented a large amount of grit debris around and within several MS4 inlets located on Read Street adjacent to the Facility that had accumulated since 2019, when the MS4 last cleared the inlets.

52. On May 2, 2024, the EPA sent an information request to Respondent under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (“EPA Information Request”).

53. On May 14, 2024, Respondent responded to the EPA Information Request.

54. On May 20, 2024, the EPA notified Respondent that the response to the EPA Information Request was missing requested documents.

55. On June 10, 11, and 17, 2024, Respondent provided the EPA with supplemental responses to the EPA Information Request.

EPA’s Allegations of Violation

Count 1

Unauthorized Stormwater Discharge

56. The paragraphs above are re-alleged and incorporated herein by reference.

57. From September 29, 2022 to December 20, 2023, Respondent’s authorization under General Permit NER91 lapsed and the discharge of pollutants associated with Respondent’s industrial activity was prohibited.

58. During the EPA Inspection, the EPA observed and documented the following conditions at the Site:

- a. No structural or nonstructural sediment and erosion controls at the Site or around MS4 inlets to prevent or minimize pollutants in stormwater runoff;
- b. Eroding piles of processed material stored on the Site with no sediment or erosion control measures;
- c. Piles of material stored on the Site for processing with no sediment or erosion control measures;
- d. Outfall 04 was surrounded by processed material with only an upside-down dumpster intended to prevent sediment from entering the MS4 inlet; and
- e. Evidence of stormwater flowing from the Site into Read Street.

59. During the MS4 Inspection, the City observed and documented that since 2019 when the City had last assessed and cleared out grit debris from the MS4 inlets on Read Street adjacent to the Facility, a large amount of grit debris had again accumulated within and around the MS4 inlets and in and through the MS4.

60. In response to the EPA Information Request, Respondent produced a lab report dated July 7, 2017 ("2017 Lab Report"), which showed total suspended solids in stormwater runoff as 612 mg/L, over four times the benchmark concentration for total suspended solids of 100 mg/L assigned to the Facility in Table 8.J-1 of the General Permits.

61. During the period of NPDES permit lapse, conditions existed at the Site that caused pollutants from Respondent's industrial activities to be discharged in stormwater runoff during and after precipitation events.

62. Pollutants discharged in stormwater runoff from the Site during the period of NPDES permit lapse went through the MS4 and into Carter Lake or the Missouri River.

63. Based on observations and information from the EPA Inspection, the MS4 Inspection, a review of documents provided by Respondent, the City, and NDEE, and other relevant information, Respondent discharged pollutants in stormwater to waters of the United States during the period of NPDES permit lapse.

64. Respondent's discharge of pollutants from a point source to waters of the United States without authorization by a NPDES permit is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

**Count 2
Failure to Update SWPPP and/or Inadequate SWPPP**

65. The paragraphs above are re-alleged and incorporated herein by reference.

66. Part 5.1 of the General Permits identifies all the required elements of a facility SWPPP which include but is not limited to: stormwater pollution prevention team, site description, summary of potential pollutant sources, and description of control measures.

67. Part 5.1.2 of the General Permits states that the SWPPP must include a site description which includes activities at the facility, a site map showing the site size, location of structural control measures, direction of stormwater flow, potential pollutant sources, stormwater inlets and outfalls, MS4 discharge points, and locations of activities exposed to precipitation.

68. Part 5.1.4.1 of General Permit NER91 and Part 5.1.4 of General Permit NER92 state that Respondent must document the location and type of control measures installed and implemented at the Facility to comply with the listed Parts of the General Permits.

69. Part 5.2 of the General Permits states that Respondent must modify the Facility's SWPPP when a triggering condition for corrective action in Part 3 of the General Permits occurs

and that modification of the SWPPP must be made in accordance with the respective corrective action deadline in Part 3 of the General Permits.

70. Part 3.1 of General Permit NER91 and Part 3.1.1 of General Permit NER92 state that if any of the listed conditions occur, Respondent must review and revise the selection, design, installation, and implementation of the control measures at the Facility to ensure the condition is eliminated and will not be repeated.

71. Part 3.3 of General Permit NER 91 and Part 3.1.3 of General Permit NER92 state that Respondent must document the discovery of any condition listed in the referenced portions of Part 3 within 24 hours of making the discovery and within 14 days of discovery document any corrective actions taken to eliminate or further investigate the deficiency or, if no corrective action is needed, the basis for that determination.

72. Part 3.4 of General Permit NER91 and Parts 3.3.1 and 3.3.2 of General Permit NER92 state that Respondent must document the listed items within the stated time from discovery of the condition listed in Part 3, submit the documentation to NDEE within 30 days of initial discovery of the condition, and retain a copy of the documentation with the SWPPP as required in Part 5.4.

73. The City Site Inspection in 2019 documented inadequacies with and the need to update the 2017 SWPPP including, but not limited to, inaccuracies with the list of stormwater pollution prevention team staff members, industrial activities descriptions, site map, and description and evaluation of non-stormwater discharges.

74. On or before April 10, 2021, Respondent began to store large amounts of waste concrete for processing on the 5.75-acre south section of the Facility, but failed to update the 2023 SWPPP to include the Site changes.

75. The 2017 SWPPP failed to include, or Respondent failed to update the 2017 SWPPP to include, among other things, the following items:

- a. Accurate description of control measures;
- b. List of all inlets and outfalls under Section 1.7;
- c. Accurate and consistent outfall information throughout the SWPPP;
- d. Site map containing the 5.75 acre storage area added to the Facility in 2021 or all outfalls;
- e. Complete list of potential pollutants associated with each identified activity at the Facility; and
- f. Accurate description of the nature of site activities at the Facility.

76. The 2023 SWPPP failed to include, among other things, the following items:

- a. Accurate description of current control measures;
- b. Current permit information;
- c. Accurate and consistent outfall information throughout the SWPPP;

- d. Fueling, oil, or storage areas where spills and leaks could discharge to a stormwater conveyance; and
- e. Site map containing current site conditions and 5.75 acre storage area.

77. Based on the observations documented during the EPA Inspection, City Site Inspection, a review of information provided by Respondent and NDEE, and other relevant information, the 2017 and 2023 SWPPPs were inadequate and inaccurate and/or Respondent failed to update and amend the 2017 and 2023 SWPPPs as required by Parts 3 and 5 of the General Permits.

78. Respondent's failure to develop an adequate and accurate SWPPP and/or to amend the SWPPPs are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3
Failure to Conduct Benchmark Monitoring and/or Failure to Maintain Records of
Benchmark Monitoring**

79. The paragraphs above are re-alleged and incorporated herein by reference.

80. Part 6 of the General Permits state that stormwater samples must be collected, analyzed, and documented consistent with the procedures described in Part 6 and any additional sector-specific requirements in Part 8.

81. Part 6.2.1.2 of General Permit NER91 and Part 6.2.2.2 of General Permit NER92 state that benchmark monitoring must be conducted for all applicable parameters in the first four quarters in the first year of permit coverage, beginning in the first full quarter of permit coverage.

82. Part 7.1 of General Permit NER91 and Part 7.2 of General Permit NER92 state that "all monitoring data collected pursuant to Parts 6.2 must be maintained with the SWPPP after you have received your complete laboratory results for all monitored outfalls for the reporting period."

83. Part 7.3 of General Permit NER91 and Part 7.4 of General Permit NER92 state that Respondent must retain copies of the SWPPP, reports, and monitoring data for at least three years from the date coverage under the General Permits expire or are terminated.

84. During the EPA inspection and in response to the EPA Information Request, Respondent failed to produce benchmark monitoring records as required under Part 6 of the General Permits for October 2019 to September 2022 and December 2023 to June 2024.

85. The 2017 Lab Report is the only quarterly benchmark monitoring record produced by Respondent and shows total suspended solids in stormwater runoff as 612mg/L, over four times the benchmark concentration of 100 mg/L assigned to the Facility in Table 8.J-1 of the General Permits.

86. Based on the EPA Inspection, Respondent's response to the EPA Information Request, and other relevant information, Respondent failed to conduct benchmark monitoring and/or failed to maintain records as required by the General Permits Parts 6 and 7.

87. Respondent's failure to conduct benchmark monitoring and/or maintain records of benchmark monitoring are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to Conduct Quarterly Inspections and/or Adequately Document Quarterly Inspections and/or Maintain Records of Quarterly Inspections

88. The paragraphs above are re-alleged and incorporated herein by reference.

89. Part 4.1.1 of the General Permits state that Respondent must conduct routine facility inspections at least quarterly of all the listed areas of the Facility, including where industrial materials or activities are exposed to stormwater and of all stormwater control measures used to comply with the General Permits' effluent limits.

90. Part 4.1.2 of the General Permits state that Respondent must document the findings of each routine facility inspection performed and maintain the documentation onsite with the SWPPP as required in General Permits Part 5.4.

91. Part 7.3 of General Permit NER91 and Part 7.4 of General Permit NER92 state that Respondent must retain copies of the SWPPP and reports for at least three years from the date that coverage under the General Permits expires or is terminated.

92. During the EPA Inspection and in response to the EPA Information Request, Respondent was unable to produce quarterly inspection records for January 2020 to September 2022 and December 2023 to March 2024.

93. In response to the EPA Information Request, Respondent only produced quarterly inspection reports from March 2019 to October 2019 and April 2024. The inspection reports did not include all components required under Part 4.1.2 of the General Permits, including, but not limited to: name, title, and signature of inspector, weather information, and description of discharges.

94. Based on the EPA Inspection, Respondent's response to the EPA Information Request, and other relevant information, Respondent failed to conduct quarterly inspections and/or adequately document quarterly inspections and/or maintain records of quarterly inspections as required by Parts 4 and 7 of the General Permits.

95. Respondent's failure to conduct and adequately document quarterly inspections and/or failure to maintain records of quarterly inspections are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5

Failure to Conduct Comprehensive Site Inspections and/or Failure to Maintain Records

96. The paragraphs above are re-alleged and incorporated herein by reference.

97. Part 4.3.1 of General Permit NER91 states that Respondent must conduct annual comprehensive site inspections that cover all areas of the Facility affected by the requirements in the permit and include a review of monitoring data collected in accordance with Part 6.2.

98. Part 4.3.2 of General Permit NER91 states that “you must document the findings of each comprehensive site inspection and maintain this documentation onsite with your SWPPP as required in Part 5.4.”

99. Part 7.3 of General Permit NER91 states that Respondent must retain copies of the SWPPP and reports for at least 3 years from the date coverage under the permit expires or is terminated.

100. During the EPA Inspection and in response to the EPA Information Request, no comprehensive inspection records were provided for January 2020 through September 2022.

101. Based on the EPA Inspection, EPA’s Information Request, and other relevant information, Respondent failed to conduct and adequately document comprehensive site inspections and/or failed to maintain records of comprehensive site inspections as required by Parts 4 and 7 of General Permit NER91.

102. Respondent’s failure to conduct comprehensive inspections and/or maintain records of comprehensive site inspections are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6

Failure to Conduct Quarterly Visual Assessment of Stormwater Discharges and/or Failure to Maintain Records

103. The paragraphs above are re-alleged and incorporated herein by reference.

104. Part 4.2.1 of General Permit NER91 states that once a quarter Respondent must collect a stormwater sample from each outfall, conduct a visual assessment of the samples and visually inspect the samples for the listed water quality characteristics.

105. Part 4.2.2 of General Permit NER91 states that Respondent must document the results of the visual assessments and maintain the documentation onsite with the SWPPP.

106. Part 7.3 of General Permit NER91 states that Respondent must retain copies of the SWPPP, reports, and monitoring data for at least three years from the date coverage under the permit expires or is terminated.

107. During the EPA Inspection and in response to the EPA Information Request, Respondent was unable to produce any visual assessment records for April 2021 through June 2021.

108. Based on the EPA Inspection, EPA's Information Request, and other relevant information, Respondent failed to conduct quarterly visual assessments of stormwater discharges and/or failed to maintain records of quarterly visual assessments as required by Parts 4 and 7 of General Permit NER91.

109. Respondent's failure to conduct required visual assessments and/or maintain records of the quarterly visual assessments are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 7

Failure to Implement Adequate Stormwater Controls

110. The paragraphs above are re-alleged and incorporated herein by reference.

111. Part 2.1 of General Permit NER92 states that Respondent must select, design, install, and implement stormwater control measures in accordance with good engineering practices and manufacturer's specifications to minimize pollutant discharges.

112. During the EPA Inspection, no stormwater controls were present at Outfalls 01, 02, 03, and 05, and an overturned dumpster was used as a stormwater control for Outfall 04.

113. During the MS4 Inspection, the City observed and documented stormwater controls at the Facility for Outfall 04, but no stormwater controls at Outfalls 01, 02, 03, and 05.

114. Prior to the MS4 Inspection in 2019, the City assessed and cleaned Outfalls 01, 02, 03, and 05. During the MS4 Inspection, the City observed and documented large accumulations of grit debris around and within Outfalls 01, 02, 03, and 05 and the MS4 system.

115. Based on the MS4 Inspection, EPA inspection, and other relevant information, Respondent failed to implement adequate stormwater controls as required by Part 2.1 of General Permit NER92.

116. Respondent's failure to implement adequate stormwater controls are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Reasonable Time to Achieve Compliance

117. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and taking into account the seriousness of the violations, the EPA finds that six (6) months is a reasonable time for Respondent to achieve compliance with the terms and conditions of General Permit NER92.

Order for Compliance on Consent

118. Based on the EPA's Allegations of Violation 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.

119. 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 the applicable requirements of General Permit NER92, including, but not limited to:

- a. Within thirty (30) calendar days of the Effective Date, Respondent shall submit to the EPA for approval the name of a qualified consultant with experience in SWPPP development and implementation to review and update the 2023 SWPPP and supporting documents to include all components required by General Permit NER92;
- b. Within sixty (60) calendar days of the Effective Date, Respondent shall complete all updates to the 2023 SWPPP and evaluate floor drains inside all buildings at the Facility to determine any connections to the City of Omaha MS4;
- c. Within fourteen (14) calendar days of completing actions under Paragraph 119.b, Respondent shall complete corrective actions required by the updated SWPPP;
- d. After completing the requirements in Paragraphs 119.b and 119.c, at the next measurable rainfall, Respondent shall conduct benchmark monitoring as required by Part 6.1.3 of General Permit NER92 and shall conduct quarterly benchmark monitoring as required by Part 6.1.3 of General Permit NER92 until all required benchmark monitoring is complete; and
- e. Within thirty (30) calendar days of the Effective Date, Respondent shall conduct a routine facility inspection, comprehensive site inspection, and visual assessment of an applicable stormwater discharge. Respondent shall conduct routine facility inspections, annual comprehensive inspections, and stormwater visual monitoring as required by General Permit NER92 thereafter.

120. Within ninety (90) calendar days of the Effective Date, Respondent shall provide a report to the EPA, with a copy to the NDEE, that includes:

- a. A copy of the updated SWPPP and supporting documents;
- b. Photographic documentation and description of the floor drain evaluation required under Paragraph 119.b;
- c. A copy of benchmark sampling results required under Paragraph 119.d;
- d. A copy of any reports for inspections, training, or visual monitoring that have been conducted since the Effective Date; and
- e. Photographic documentation and a description of all additional actions, maintenance, structural controls, and non-structural controls taken to bring the Facility into full compliance with General Permit NER92.

121. The EPA may, after a review of the SWPPP, inspection reports, benchmark sampling results, photographs, and description of actions taken submitted by Respondent, provide written comments and suggestions regarding such submittals. Review and comment by the EPA on the SWPPP or other submissions from Respondent does not relieve Respondent of the responsibility to comply with General Permit NER92, the CWA, applicable State laws or municipal ordinances, or this Order.

122. Within ninety (90) calendar days of the Effective Date, Respondent shall submit to the EPA for approval the name of the contractor to complete the work required in Paragraph 123, if the EPA rejects Respondent's proposed contractor, then Respondent shall have ten (10) calendar days to submit a new contractor to the EPA for approval.

123. Within one-hundred and twenty (120) calendar days of the Effective Date, Respondent shall contract a third party approved by the EPA to remove debris from Outfalls 01, 02, 03, 04, and 05 and downgradient MS4 infrastructure until all debris is removed, with a minimum of 632 feet of MS4 line segment cleared of debris from the eastern most Read Street MS4 inlet to the intersection of Read Street and North 16th Street to prevent further discharge of pollutants into the MS4. Any debris removed from the MS4 must be stored, processed, or disposed of according to applicable city, state, and federal laws and regulations. At least five (5) business days prior to conducting work on the MS4, Respondent must notify the City of the work to be conducted on the MS4.

124. Within fourteen (14) calendar days of completing the requirements of Paragraph 123, Respondent shall submit photographic evidence of the outfalls and the subsequent MS4 line segment cleared of debris and receipts of payment for the MS4 debris clearing to the EPA and the MS4.

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

Reports/Submissions

126. **Semi-Annual Reporting:** In addition to the reports required above, Respondent shall submit semi-annual reports describing actions it has taken to ensure continued compliance with the terms of General Permit NER92 and this Order. Reports are due to the EPA, with a copy to NDEE, six months after the required report in Paragraph 120 is submitted and shall continue for at least two years from the date of the Paragraph 120 report submittal. Each report shall include, at a minimum, the following information for the previous six months:

- a. A copy of the report for each quarterly site inspection, visual monitoring, and annual comprehensive site inspection;
- b. A description of all employee trainings that have been conducted;
- c. Results of quarterly benchmark monitoring conducted;
- d. Photographs of structural controls and condition of all outfalls;
- e. A detailed description of all actions taken or planned to bring the Facility into

- full compliance with all conditions and limitations of General Permit NER92, including any updates or amendments to the SWPPP and any additional structural or non-structural controls added to the site; and
- f. Documentation of Respondent's communication with the MS4 and any requests from Respondent to the City to complete work on the MS4.

127. Submittals. All documents required to be submitted to the EPA by this Order, including the certification statement in Paragraph 130 below, shall be submitted by electronic mail to:

Erin Kleffner, or her successor
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219
Kleffner.erin@epa.gov

128. 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.

129. All documents required to be submitted pursuant to this Order shall also be submitted by electronic mail to NDEE to the address provided below:

Phillip Halsted
Nebraska Department of Environment and Energy
phillip.halsted@nebraska.gov

130. Each submission requirement of this Order shall contain the following certification signed by an authorized official for Respondent, 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

131. 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.

132. 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.

133. 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.

134. 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.

135. 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.

136. At the EPA's sole discretion, extensions of the compliance schedules/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

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

For the Complainant, United States Environmental Protection Agency Region 7:

Date

DAVID COZAD Digitally signed by DAVID COZAD
Date: 2025.03.11 15:41:48 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

EMILY QUINN Digitally signed by EMILY QUINN
Date: 2025.03.12 08:26:46 -05'00'

Emily Quinn
Office of Regional Counsel

For the Respondent, BMakk Corporation:

 3/1/25
Signature Date

DR. BENNETT ACHAB
Name

PRESIDENT
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, by electronic mail to R7_Hearing_Clerk_Filings@epa.gov.

I further certify that on the date noted below, I sent a true and correct copy of this signed Findings of Violation and Administrative Order for Compliance on Consent in the stated manner to the following:

Copy emailed to Respondent:

Bennett Achigbu
BMaKK Corporation, President
bachigbu@bmakk.com

Copy emailed to representatives for Complainant:

Emily Quinn
EPA Region 7 Office of Regional Counsel
quinn.emily@epa.gov

Erin Kleffner
EPA Region 7 Enforcement and Compliance Assurance Division
kleffner.erin@epa.gov

Copy emailed to NDEE:

Phillip Halsted
Nebraska Department of Environment and Energy
phillip.halsted@nebraska.gov

Date

Signature