

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)

Beatrice Concrete Company, Inc.)
Seitz Quarry)
30173 South 36 Road)
Beatrice, Nebraska 68310)

Respondent)

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

Docket No. CWA-07-2008-0074

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

2. Respondent is Beatrice Concrete Company, Inc., a corporation incorporated under the laws of Nebraska and authorized to conduct business in the State of 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 storm water. Section 402(p) of the CWA, requires, in part, that a discharge of storm water 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, 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)(iii) defines “storm water discharge associated with industrial activity”, in part, as “facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations . . . production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations.”

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 storm water under the NPDES, Permit No. NER000000 on September 18, 1997. This permit was administratively extended on August 28, 2002. The permit governs storm water 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 Beatrice Concrete Seitz Quarry, located at 30173 S. 36 Road, Beatrice, Nebraska (the Site) with a SIC code of 1422.

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and flows towards and into the Big Blue River. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

15. 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).

16. Respondent discharged pollutants into "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

17. Storm water 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)(iii), 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 No. NER000705, which was issued on November 17, 1997.

20. On May 5, 2008, 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 storm water at the site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Implement and Update Storm Water Pollution Prevention Plan ("SWPPP")

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

22. Section D, Subsection 1 of the Respondent's permit requires that a SWPPP be developed, maintained, and implemented.

23. The SWPPP at Paragraph C(5)(a)(8) – “Sediment and Erosion Control” requires that “[f]or exposed soils, keep slopes to a minimum to prevent excessive erosion. For steep slopes on cuts, use straw bales or other erosion prevention techniques. Replace plant cover when possible.

24. The inspection, referenced in paragraph 20 above, revealed evidence of erosion and sedimentation from sand barriers intended to prevent sedimentation and pollutants from reaching the river. No straw bales or other erosion prevention techniques were implemented to prevent sediment migration.

25. The SWPPP at Paragraph C describes the requirement for, inter alia, the following items: annual review of the SWPPP, employee training, and semi-annual site inspections.

26. The inspection, referenced in paragraph 20 above, revealed that Respondent did not implement all requirements of the SWPPP including the annual review of SWPPP, employee training, and semi-annual site inspections.

27. Section D, Subsection 4(b) of the Respondent’s permit requires that the SWPPP be updated within thirty (30) days of any change at the facility that require the SWPPP to be modified. In addition, Paragraph C(1) of the SWPPP requires an annual update of the SWPPP.

28. The inspection, referenced in paragraph 20 above, revealed that Respondent did not update the SWPPP to reflect current facility operational practices, including the site map and personnel responsibilities.

29. Respondent’s failure to update and fully implement the SWPPP is a violation of Respondent’s permit, and as such, a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 2

Failure to Prevent and Contain Spills

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

31. Section D, Subsection 2.d of Respondent’s permit requires that the facility take measures to prevent spills and to prevent any spills that might occur from impacting waters of the state.

32. The inspection, referenced in paragraph 20 above, revealed several areas with ground discoloration and evidence of spills: under the used oil tanks located outside, in the storage shed from mishandling of lubricant oils, and under the fueling pump next to the diesel tank.

33. Respondent's failure to prevent and contain spills is a violation of Respondent's permit, and as such, 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

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 36.

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 including, but not limited to, the following items:

- a) Ensure that the facility's SWPPP is fully implemented, updated, and maintained on-site as required by the permit, Section D, Subsection 2.
- b) Ensure that erosion control mechanisms are properly implemented and maintained, including, but not limited to: minimum slopes to prevent excessive erosion, straw bales for steep slopes and cuts, and replacement of plant cover, as required by the permit, Section D, Subsection 2.c.
- c) Ensure that the facility takes measures to prevent spills and to prevent any spills that might occur from impacting waters of the state as required by the permit, Section D, Subsection 2.d.

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:

Dr. Delia Garcia
Water Enforcement Branch
U.S. Environmental Protection Agency - Region VII
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 by mail to:

Mr. Pat Rice, Assistant Director
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
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.

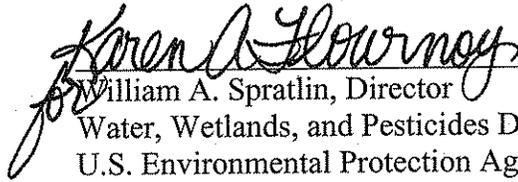
Effective Date

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 VII.

Termination

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

Issued this 2nd day of September, 2008.



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



Sarah LaBoda
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

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. Lloyd Warner, Plant Manager
Beatrice Concrete Company
Seitz Quarry
30173 S. 36 Road
Beatrice, NE 68310

And via first class mail to:

Mr. Pat Rice, Assistant Director
Enforcement Section
Water Quality Division
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
Lincoln, NE 68509-8922

September 3, 2008
Date

Kimberly Kestel