

FILED

September 24, 2025

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**U.S. EPA REGION 7
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of:)	Docket No. CWA-07-2025-0231
)	
American Walnut Company, LLC)	
)	Administrative Order on Consent
)	
Respondent.)	
)	
Proceeding under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Administrative Order on Consent (Order) is made and issued pursuant to Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). The authority to issue this Order has been duly delegated to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 7 with concurrence by the Office of Regional Counsel.

2. Respondent is American Walnut Company, LLC, a limited liability company doing business in Missouri.

3. The EPA, together with the Respondent, enter this Order to address Respondent's alleged violations of the CWA and National Pollutant Discharge Elimination System (NPDES) permit for Respondent's facility. As set forth in this Order, the Parties have reached agreement regarding a framework and timeframes for Respondent to attain compliance with the CWA and the NPDES permit.

General Provisions

4. Respondent admits each jurisdictional allegation set forth in this Order.

5. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution or enforcement of this Order.

6. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.

7. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this Order, including any costs related to resolution of any dispute arising regarding this Order.

8. This Order does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Order does not constitute a waiver, suspension, or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

9. Respondent waives 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 pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

10. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter the terms and conditions of this Order and to execute and legally bind the party.

11. By signing this Order, Respondent acknowledges that this Order may be available to the public and represents that, to the best of Respondent's knowledge and belief, this Order does not contain any confidential business information or personally identifiable information from Respondent.

12. Respondent certifies that any information or representation it has supplied or made to the EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA, regarding matters relevant to this Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

13. Terms used in this Order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

Statutory and Regulatory Background

14. 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, which provides that pollutants may be discharged only in accordance with the terms of an NPDES permit.

15. 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.

16. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States.”

17. 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.

18. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth the requirements for the issuance of NPDES permits for the discharge of stormwater. It requires, in part, that a discharge of stormwater associated with industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

19. Pursuant to Section 402(p) of the CWA, 33, U.S.C. § 1342(p), the EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

20. 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.

21. 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 stormwater and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.

22. Included in the categories of facilities considered to be engaging in “industrial activity” are facilities involved in log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 C.F.R. 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities). *See* 40 C.F.R. § 122.26(b)(14)(ii).

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

24. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue a compliance order or commence a civil action for appropriate relief against any person who the EPA finds is in violation of, *inter alia*, Section 301 of the CWA or any permit condition or limitation implementing the CWA in an NPDES permit issued by a State.

General Allegations

25. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

26. At all times relevant to this action, Respondent owned, operated, or otherwise controlled a sawmill operation at 2801 S. 2nd Street, St. Joseph, Missouri, 64501 (Facility). The Facility operates under SIC 2421.

27. Respondent has been operating at this location since approximately 1993.

28. The Facility comprises approximately 12 acres, adjacent to a city of St. Joseph MS4 drainage ditch that directs surface water north to Whitehead Creek then 850 west to the Missouri River. Activities at the facility involve raw timber storage and fabrication of untreated hardwood products. Operations at the site include the fabrication of hardwood products such as kiln-dried hardwood slabs, gun stocks/blanks, and other specialty kiln-dried hardwood products cut to size. Equipment at the facility includes wood chipping machinery, wood milling and specialty wood shaping machines, wood steaming chambers, dry kilns, and an above-ground storage tank (AST) refueling station. Some of the facility’s material storage is outside.

29. The Facility has five permitted outfalls, Outfalls 001, 002, 003, 004, and 005. The outfalls discharge to the St. Joseph MS4 drainage ditch on the west boundary of the site. The MS4 discharges to perennial Whitehead Creek 367 feet north of Outfall 004, and then approximately 850 feet west to the Missouri River.

30. Stormwater runoff and surface drainage flows west to the city of St. Joseph MS4 then north to Whitehead Creek and west to the Missouri River.

31. The Site contains “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), and “point sources” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

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

33. Whitehead Creek and the Missouri River are “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

34. Discharges from Outfalls 001 through 005, stormwater runoff, and surface drainage from Respondent’s industrial activity at the Facility result in the addition of pollutants

from point sources to navigable waters and thus is the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

35. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

36. Effective January 31, 2025, MoDNR issued General State Operating NPDES Permit Number MOR22A264 to American Walnut Company, LLC, for industrial stormwater discharges from the Site (Permit). The Permit expires on December 19, 2029.

37. The Permit authorizes the discharge of stormwater runoff from the Facility subject to compliance with the conditions and limitations set forth in the Permit.

38. On May 21-23, 2025, the EPA conducted a compliance evaluation inspection (EPA Inspection) of the Facility pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with the Permit and CWA. During the Inspection, the EPA inspector reviewed Respondent’s records and obtained copies of documents related to the Permit, including the Facility’s stormwater pollution prevention plan (SWPPP), and inspection records. The EPA inspector also toured the Facility, observed discharge locations, and photographed various stormwater-related areas.

39. The EPA emailed to Respondent a copy of the Inspection report on or about July 1, 2025.

Findings of Violation

Count 1

Failure to Develop and Implement an Adequate SWPPP

40. The facts stated above are herein incorporated by reference.

41. NPDES General Permit MOR22A264 Part IV. 4 requires the development and implementation of a SWPPP.

42. NPDES General Permit MOR22A264 Part IV. 6 states facilities must include in the SWPPP the following:

- (a) an assessment of all stormwater discharges associated with the facility, facility activities, and facility materials. This assessment must include a list of potential contaminants.
- (b) a listing of Best Management Practices (BMPs) and a narrative explaining how the BMPs will be implemented to control and minimize the amount of potential contaminants entering stormwater.
- (d) a site map of all permitted features and structural BMP(s).

- (e) a schedule for monthly site inspections and a brief written report, which includes the name of the inspector, the signature of the inspector, and the date.
- (h) a provision for evaluating benchmarks/effluent limitations established in this permit.
- (g) a provision for providing training to all personnel involved in material handling, material storage, and housekeeping of areas having materials exposed to stormwater.

43. The EPA's inspection identified the following SWPPP deficiencies:

- (a) Inadequate hand-drawn site map on an aerial image dated March 1, 2017.
- (b) Inadequate assessment of all stormwater discharges associated with facility activities and materials.
- (c) Inadequate listing of BMPs and how they will be implemented.
- (d) Failure to include a schedule for monthly site inspections.
- (e) Failure to include description for providing stormwater training to employees.

44. Respondent's failure to develop and implement an adequate SWPPP is a violation of the terms and conditions of Respondent's NPDES Permit and the CWA.

Count 2
Failure to Implement BMPs and/or Inadequate BMPs

45. The facts stated above are herein incorporated by reference.

46. NPDES General Permit MOR22A264 Part IV.7 states the following minimum BMPs must be implemented at all facilities:

- (a) Prevent the spillage or loss of fluids, oil, grease, fuel, etc. from vehicle maintenance, equipment cleaning, or warehouse activities and thereby prevent the contamination of stormwater from these substances.
- (b) Provide good housekeeping practices on-site to keep solid waste from entering waters of the state. For example, direct stormwater away from areas where storage, loading and unloading, and material handling occur; perform good housekeeping to prevent the discharge of wood debris and sawdust; and minimize the generation of dust.
- (c) Facilities shall manage materials (products, stockpiles, waste piles, etc.) to ensure these materials are not discharged off-site or into a water of the state.

47. The EPA's inspection identified the following areas missing BMPs at the Respondent's facility:

- (a) Visible petroleum staining on all walls of the concrete containment structure with heavy staining on the interior walls and metal stands holding the raised ASTs.
- (b) Visible dark staining on the soil around the base of the containment structure with significant staining present near the drainage port on the south side of the containment.
- (c) Lack of spill kits stationed at the refueling station.

- (d) Visible non-stormwater discharge from steam pipe condensate discharge northeast of Outfall 2.
- (e) Failure to address accumulated saw dust and woodchips.
- (f) Uncontrolled discharge of boiler condensate water.

48. Respondent's failure to maintain and implement adequate BMPs is a violation of the terms and conditions of Respondent's NPDES Permit and the CWA.

Order for Compliance

Based on the factual allegations and Findings of Violation set forth above, and pursuant to the authority of Sections 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent AGREES and is hereby ORDERED to take the actions described below.

49. Within thirty (30) days of the Effective Date, Respondent shall submit to the EPA a Compliance Plan that includes:

- (a.) A description of actions taken or to be taken to correct the deficiencies and eliminate and prevent recurrence of the alleged violations identified in this Order, and to come into compliance with all applicable requirements of its Permit, including, as necessary, revisions to the SWPPP.
- (b.) A schedule, subject to EPA approval, for implementation of each of the proposed actions.

Reports/Submissions

50. *Quarterly Reporting.* In addition to the report required above, Respondent shall submit quarterly reports describing the actions it has taken to ensure continued compliance with the terms of its Permit and this Order. These reports are due beginning three (3) months from the Effective Date and every three (3) months thereafter until the Order is terminated. Each report shall include, at a minimum:

- a. A description of implementation and/or revision of the SWPPP during the previous three (3) month period.
- b. A description of work and other actions taken to construct structural controls and/or implement other controls, in the previous three (3) month period; and
- c. Copies of all relevant documentation regarding the activities described pursuant to subparagraphs (a) and (b), including, but not limited to, inspection reports and monitoring records, formal and informal enforcement actions, etc.

51. *Submittals.* All documents and other information required to be submitted to the EPA by this Order shall be submitted by electronic mail to:

Sans.cynthia@epa.gov
Cynthia Sans
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

52. 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.

All documents required to be submitted pursuant to this Order shall also be submitted to MDNR to the address provided below:

Mr. John Hoke, Deputy Director
Division of Environmental Quality
Missouri Department of Natural Resources
john.hoke@dnr.mo.gov

Mike Carroll, Director
MDNR, Kansas City Regional Office
Missouri Department of Natural Resources
Mike.carroll@dnr.mo.gov

53. After review of the schedule required by paragraph 49 of this Order, the EPA may approve or disapprove the schedule, in whole or in part. The EPA shall approve the schedule or any portion so long as the submission fulfills the requirement under this Order. Upon EPA approval, the schedule by Respondent is incorporated and enforceable as part of this Order. Respondent shall implement the Compliance Plan required by paragraph 49 according to the approved schedule.

54. If the EPA disapproves the schedule, EPA will notify Respondent in writing, which may include notice by email, and the EPA may require Respondent to supplement or modify its schedule. Within 30 days following receipt of written notice of EPA's disapproval, Respondent must submit a corrected schedule to the EPA for approval. If Respondent's modified schedule is disapproved in whole or in part by the EPA, EPA may require Respondent to correct the deficiencies or the EPA may determine that the schedule fails to meet the requirements of this Order.

55. Notwithstanding the receipt of a notice of disapproval pursuant to paragraph 54, above, Respondent must proceed to take all actions and provide all submissions required under this Order, including any actions required under any non-deficient portion(s) of its submission if such action can be undertaken independent of the deficient portion of Respondent's submission.

Effect of Compliance with the Terms of this Order for Compliance

56. 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.

57. Failure to comply with this Order may subject Respondent to penalties up to \$68,445 per day for each violation pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19.

Access and Requests for Information

58. 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 309 of the CWA, 33 U.S.C. § 1319 and/or any other authority.

Severability

59. 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.

Modifications

60. Any request to modify the terms of, or parties to, this Order shall be submitted, in writing, by Respondent to the EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this Order shall not relieve Respondent of any obligation under this Order and shall have no effect on EPA's statutory or regulatory authority to enforce the terms of this Order, in its sole and unreviewable discretion. All deadlines for performance under this Order may be extended upon written approval by the EPA, at its sole discretion, without formal amendment to the Order.

Effective Date

61. 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.

Termination

62. Upon EPA's determination that Respondent has completed all tasks required pursuant to this Order, Respondent shall submit to the EPA a Certification of Compliance and Request for Termination of this Order. Such certification and request shall include:

- (a.) a certification that Respondent has maintained compliance with this Order for the term of this Order; and
- (b.) all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with this Order.

63. If, following review of any Certification of Compliance and Request for Termination of this Order, the EPA determines that any requirement has not been completed and implemented in accordance with this Order, the EPA will notify Respondent in writing, provide a written summary of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, the EPA may also require Respondent to submit a revised Certification of Compliance and Request for Termination of this Order.

64. If, following review of any Certification of Compliance and Request for Termination of this Order, the EPA agrees that Respondent has adequately complied with all requirements of this Order, then the EPA may, in its unreviewable discretion, provide written notification of termination of this Order.

65. Notwithstanding any of the above, the EPA may terminate this order upon written notice issued by an authorized representative of the EPA.

For the Complainant, U.S. Environmental Protection Agency:

David Cozad
Director
Enforcement and Compliance Assurance Division

KRISTINA
GONZALES

Date: 2025.09.22
10:39:32 -05'00'

Kristina Gonzales
Senior Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, American Walnut Company, LLC:

Mark Schmittlein 9-19-25
Signature Date

Mark Schmittlein
Name

CEO
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered this Administrative Order on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency.

I further certify that on the date noted below I sent a copy of the final Order by electronic mail to the following:

Copy emailed to representatives for Respondent:

Mark Schmidtlein
mark@americanwalnut.com

Copy emailed to MoDNR:

Mr. John Hoke, Director
john.hoke@dnr.mo.gov
Water Protection Program
Division of Environmental Quality

Copy emailed to representatives for Complainant:

sans.cynthia@epa.gov
Cynthia Sans
EPA Region 7
Enforcement and Compliance Assurance Division

Signature