



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
FIVE POST OFFICE SQUARE – SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

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September 30, 2010

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

Re: Administrative Complaint and Notice of Opportunity for Hearing
In the Matter of PRM Concrete Corporation
Docket No. CWA-01-2010-0050

Dear Ms. Santiago,

Enclosed for filing in the above-referenced matter, please find the original and one copy of an Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amanda J. Helwig".

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency

cc: William McHale, President, PRM Concrete Corporation
Jennifer R. Cervenka, Esq., Partridge, Snow, & Hahn LLP

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

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_____)
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In the Matter of:)
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)
PRM Concrete Corporation)
775 School Street)
Pawtucket, RI 02860)
)
Respondent)
_____)

Docket No. CWA-01-2010-0050

**ADMINISTRATIVE COMPLAINT
Proposing to Assess a Civil Penalty
Under Section 309(g) of the
Clean Water Act**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency (“EPA”) issues this Complaint to PRM Concrete Corporation (“PRM” or “Respondent”), pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. §1319(g), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits” (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and in accordance with the Consolidated Rules, Complainant hereby notifies Respondent of EPA’s intention to assess a civil penalty for violations of Sections 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a), 1318.

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a). To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in

compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344.

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, [or] partnership.”

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, and industrial waste.

7. 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.”

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined, and discrete conveyance...from which pollutants are or may be discharged.”

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any stormwater discharge “associated with industrial activity” to be authorized by a NPDES permit.

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to CWA Section 402, 33 U.S.C. § 1342.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26. Under 40

C.F.R. § 122.26(c), dischargers of stormwater “associated with industrial activity” must apply for an individual permit or seek coverage under a promulgated general permit.

12. Forty C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

13. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the EPA Administrator may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On September 17, 1984, the Administrator granted the State of Rhode Island, through RIDEM, the authority to issue Rhode Island Pollutant Discharge Elimination System (“RIPDES”) permits, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

14. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), and RIPDES Rule 31(a)(1)(ii) require facilities discharging stormwater “associated with industrial activity” to obtain a permit.

15. Forty C.F.R. § 122.26(b)(14)(ii) and RIPDES Rule 31(b)(15)(ii) specify that “stormwater discharge associated with industrial activity” includes stormwater discharge from facilities classified under Standard Industrial Classification (“SIC”) code 32 (including 3271-3273).

16. In March 2003, RIDEM issued the RIPDES General Permit for Stormwater Discharges Associated with Industrial Activities (“2003 IGP”). The expiration date for the 2003 IGP was originally set for March 19, 2004.

17. In April 2006, RIDEM issued the RIPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities (“2006 RIMSGP”). Although the expiration date for the 2003 IGP was set for March 19, 2004, it remained in

effect until the effective date of the 2006 RIMSGP, which was May 1, 2006. The expiration date of the 2006 RIMSGP is April 30, 2011.

II. ALLEGATIONS

18. PRM is a Rhode Island corporation with its principal place of business located at 775 School Street, Pawtucket, Rhode Island.

19. PRM is a “person,” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

20. PRM owns and operates a ready-mix concrete plant at 775 School Street, Pawtucket, Rhode Island (“the Facility”). The Facility is classified under SIC codes 3271 (Concrete Blocks and Bricks) and 3273 (Ready-Mixed Concrete).

21. PRM controls all daily business and industrial operations at the Facility, and otherwise meets the definition of an “operator” of the Facility, as defined at 40 C.F.R. § 122.2 and under the 2006 RIMSGP.

22. At times, during certain wet weather events, stormwater from the Facility flowed to municipal stormwater catch basins, located on School Street, and into the Seekonk River.

23. At times, during certain wet weather events, process waters from the truck rinse down area at the Facility flowed to municipal stormwater catch basins, located on School Street, and into the Seekonk River.

24. The Seekonk River flows into the Providence River and ultimately to Narragansett Bay, an embayment of the Atlantic Ocean.

25. The Seekonk River, Providence River, Narragansett Bay, and the Atlantic Ocean constitute “waters of the United States,” as defined by 40 C.F.R. § 122.2, and, thereby, “navigable waters,” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

26. The stormwater and process water discharges from the Facility were contaminated with cement, aggregate, and potential admixtures.

27. These materials discharged into waters of the United States constitute “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

28. The stormwater and process water discharges from the Facility resulted in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

29. The municipal stormwater catch basins discharging pollutants constitute “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. As the “owner” and “operator” of the Facility, PRM was required to obtain NPDES permit coverage for the industrial activity at the Facility and to comply with all requirements and conditions for operation under the CWA, its regulations, and the applicable permit.

31. PRM did not apply for coverage under the RISMGP until August 2008.

COUNT I: UNAUTHORIZED DISCHARGES OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

32. The Complaint incorporates Paragraphs 1 through 31 above by reference.

33. From October 1, 2005 through August 1, 2008, PRM conducted activities in association with the operation of a ready-mix concrete plant that resulted in the discharge of “stormwater associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(ii), to waters of the United States without authorization under any NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

COUNT II: UNAUTHORIZED DISCHARGES OF PROCESS WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

34. The Complaint incorporates Paragraphs 1 through 33 above by reference.

35. From October 1, 2005 through May 1, 2007, PRM conducted activities in association with the operation of a ready-mix concrete plant that resulted in the discharge of process waters of the United States without authorization under any NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

COUNT III: FAILURE TO APPLY FOR AN NPDES PERMIT

36. The Complaint incorporates Paragraphs 1 through 35 above by reference.

37. From October 1, 2005 through August 1, 2008, PRM failed to apply for an individual permit or submit a Notice of Intent (“NOI”) for coverage under the 2003 IGP and the 2006 RIMSGP, in violation of Section 308 of the CWA, 33 U.S.C. § 1318.

III. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

38. Based on the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g); the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, et seq.; the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, et seq.; and the Civil Monetary Penalty Inflation Adjustment Rule, 73 FR 75340 (Dec. 11, 2008) (codified at 40 C.F.R. Part 19), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up

to eleven thousand dollars (\$11,000) per day for each day during which the violations continued through January 12, 2009, up to a maximum of one hundred and seventy-seven thousand and five hundred dollars (\$177,500).

39. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. §1319(g)(2)(B), EPA takes into account the statutory factors listed in Section 309(g)(3) of the CWA, 33 U.S.C. §1319(g)(3), including the nature, circumstances, extent and gravity of the violation, or violations; Respondent's prior compliance history; the degree of culpability for the cited violations; any economic benefit or savings accruing to Respondent resulting from the violations; Respondent's ability to pay the proposed penalty; and such other matters as justice may require.

40. EPA seeks a penalty from Respondent for the violations alleged under Counts I through III of up to \$11,000 for each day of violation, amounting to at least 990 days, up to a maximum of \$177,500.

41. The storm water violations alleged represent significant violations of the CWA based on the extent and duration of the violations and because compliance with the federal storm water program is important to ensuring that storm water runoff does not contribute to the impairment of water quality.

42. The process water violations alleged represent significant violations of the CWA based on the extent and duration of the violations. Untreated and unmanaged process wastewater from concrete operations may contain pollutants that reduce oxygen levels in surface waters and have the potential to stress the aquatic community.

43. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the CWA violations and explaining how EPA calculated the proposed penalty, as required by the Consolidated Rules.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

44. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and 40 C.F.R. § 22.14, the Complaint notifies Respondent of its right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of the proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules, a copy of which is enclosed with this Complaint. Members of the public, to whom EPA must give notice of this proposed action, have a right, under Section 309(g)(4)(B) of the CWA, 33 U.S.C. §1319(g)(4)(B), to comment on any proposed penalty, as well as be heard and present evidence at the hearing. Respondent must include any request for a hearing in a written Answer to this Complaint.

45. Respondent's Answer must comply with 40 C.F.R. § 22.15. The original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109

46. Respondent should also send a copy of its Answer, as well as a copy of all other documents that Respondent files in this action, to Amanda J. Helwig, the attorney assigned to represent EPA, who is authorized to receive service in this matter, at:

Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Mail Code: 2243-A
Washington, DC 20460.

47. If Respondent fails to file a timely Answer to this Complaint, it may be found in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

V. **CONTINUED COMPLIANCE OBLIGATION**

48. Neither assessment, nor payment, of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable federal, state, or local law.

Date: 09/29/10

Susan Studien
Susan Studien
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for Hearing, as well as the Consolidated Rule of Practice at 40 C.F.R. Part 22, was sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Wanda Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

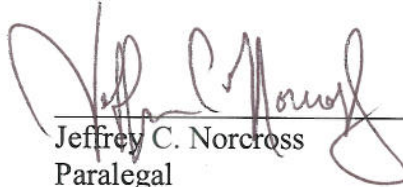
Copy by certified mail, return
receipt requested:

William McHale, President
PRM Concrete Corporation
775 School Street
Pawtucket, RI 02860

Jennifer R. Cervenka, Esq.
Partridge, Snow & Hahn LLP
180 South Main Street
Providence, RI 02903

Date: _____

9/30/2010



Jeffrey C. Norcross
Paralegal

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