

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

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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
AUDUBON MATERIALS, LLC d/b/a)	Docket No. CWA-07-2015-0014
Central Plains Cement Company LLC)	
)	CONSENT AGREEMENT/
Respondent)	FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Audubon Materials, LLC d/b/a Central Plains Cement Company LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as 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, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is Audubon Materials LLC d/b/a Central Plains Cement Company LLC, a limited liability corporation incorporated under the laws of Delaware and authorized to conduct business in the state of Missouri.

Statutory and Regulatory Framework

5. 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.

6. 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.

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

8. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity”, in part, as facilities classified as Standard Industrial Classification 3241 (Cement, Hydraulic).

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

Factual Background

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

13. At all times relevant to this action, Respondent was the owner and/or operator of a facility known as Audubon Materials LLC d/b/a Central Plains Cement Company LLC, located at 2200 North Courtney Road, Sugar Creek, Missouri (the Facility), operating under SIC code 3241.

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

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

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

17. Respondent discharged pollutants into a tributary of the Missouri, a “navigable water” as defined by CWA Section 502, 33 U.S.C § 1362.

18. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

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

20. The site received NPDES permit coverage from MDNR during its prior ownership. MDNR transferred this permit coverage to Respondent, then reissued the Respondent NPDES Permit No. M0-0002666, which became effective on September 1, 2014. The permits govern stormwater discharges associated with industrial activity.

21. On November 12-15, 2013, 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 stormwater at the Site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Comply with Effluent Limitations

22. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

23. Part A of Respondent's NPDES permit establishes the discharge limit for Total Suspended Solids (TSS), among other parameters. Respondent's permit establishes a daily maximum discharge limit for TSS of 50 mg/L and a monthly average of 50 mg/L.

24. The EPA inspection referenced in Paragraph 21 above documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the Respondent's Discharge Monitoring Reports (DMRs) revealed that Respondent's discharge exceeded the effluent daily max and/or monthly average limitations of their NPDES Permit for RSS as follows:

Date	Parameter	Outfall	Limit	Exceedance
2/13	TSS	007	50 mg/L	67 mg/L
5/13	TSS	007	50 mg/L	190 mg/L
8/13	TSS	014	50mg/L	64 mg/L
10/13	TSS	007	50 mg/L	71 mg/L
3/14	TSS	014	50 mg/L	70 mg/L

25. Respondent's alleged discharge of TSS in excess of permitted limits is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 42 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count 2

Failure to Mark Outfalls

26. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

27. Page 4, Part C, Special Conditions, Number 2 of Respondent's NPDES permit states that all outfalls must be clearly marked in the field.

28. The EPA inspection referenced in Paragraph 21 above documented that Outfalls 006 and 0012 were not clearly marked in the field.

29. Respondent's alleged failure to clearly mark outfalls in the field is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections

301(a) and 402 of the CWA, 42 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count 3

Failure to Install or Adequately Maintain Best Management Practices

30. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

31. Section C, Number 6, of Respondent's NPDES permit requires the Respondent to develop a Stormwater Pollution Prevention Plan, which shall include a list of specific Best Management Practices and a narrative explaining how BMPs will be implemented on Site to control and minimize the amount of potential contaminants that may enter storm water.

32. The EPA inspection referenced in Paragraph 21 above documented the unnamed intermittent tributary traveling through the quarry and new cement plant had been dammed with an earthen rock dam, to create a retention basin to treat and control stormwater runoff.

33. The EPA inspection referenced in Paragraph 21 above documented that Respondent failed to install adequate BMPs at drop inlet catch basins, stormwater conveyance culverts, material stockpile areas, and internal drainage courses within the Site.

34. The EPA inspection referenced in Paragraph 21 above documented areas where chemicals had spilled or equipment was leaking around the facility ground where there was no BMPs in place or insufficient BMPs in place. In one location, equipment was leaking oil into a sump pump, which subsequently discharged into a stormwater drop inlet catch basin.

35. The EPA inspection referenced in Paragraph 21 above documented spillage of raw materials, outside the staging areas for those materials, throughout the facility. During the inspection a petroleum coke feed line became clogged and a significant amount of petroleum coke was deposited near a stormwater drop inlet catch basin. The EPA inspector also observed a non-contact cooling water line that discharged to the intermittent tributary.

36. The EPA inspection referenced in Paragraph 21 above documented a significant amount of litter debris scattered outside of the alternative fuels storage building.

37. The EPA inspection referenced in Paragraph 21 above documented vehicle wash water entering the drainage pathways that traveled south to a stormwater collection ditch and north towards a stormwater drop inlet catch basin.

38. Respondent's alleged failure to install and adequately maintain BMPs is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 42 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count 4

Failure to Properly Conduct and Document Inspections

39. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

40. Section C(6)(b) of Respondent's NPDES Permit states that Respondent's SWPPP shall include a schedule for monthly Site inspections and a brief written report. The inspection must include observation and evaluation of BMP effectiveness, deficiencies, and corrective measures that will be taken. Deficiencies must be corrected within seven days and MDNR must be notified by letter. Inspection reports must be maintained on Site with the SWPPP.

41. The EPA inspection referenced in Paragraph 21 above revealed that Respondent's monthly visual Site inspection records were inadequate, due to failure to address deficiencies and spills. Specifically, deficiencies noted mirror those BMP violations listed above. The EPA inspector noted that the same deficiencies appear to be the same from one monthly inspection report to the next, as these deficiencies were not corrected.

42. The EPA inspection referenced in Paragraph 21 above documented that Respondent failed to conduct monthly inspections in February 2013 and April 2013.

43. Respondent's alleged failure properly conduct and document Site inspections is a failure of the Respondent to implement the SWPPP and is a violation of Respondent's NPDES 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.

Count 5

Failure to Properly Implement Employee Training Program

44. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

45. Section C, Part 6(d) of Respondent's NPDES permit requires Respondent to develop a SWPPP, which must include a provision to provide training to all personnel involved in the material handling and storage, and housekeeping of maintenance and cleaning areas. Proof of training shall be submitted on request of MDNR.

46. The EPA inspection referenced in Paragraph 21 above documented that Respondent failed to conduct adequate training. Specifically, the most recent training conducted at Respondent's facility did not cover required items such as potential spill areas, draining routes, and materials inventory including handling procedures and storage requirements.

47. Respondent's alleged failure to properly train employees 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.

CONSENT AGREEMENT

48. Respondent and EPA agree to the terms of this Consent Agreement and Final Order (“CA/FO”) and Respondent agrees to comply with the terms of this CA/FO.

49. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

50. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

51. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this CA/FO.

52. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to each bear their own costs and attorney’s fees incurred as a result of this action.

53. This CA/FO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

54. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent’s Site is in compliance with the CWA and all regulations promulgated thereunder.

55. The effect of settlement described in paragraph 53, above, is conditional upon the accuracy of the Respondent’s representations to EPA, as memorialized in paragraph 54 above, of this CA/FO.

56. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (“SEP”), which the parties agree is intended to secure significant environmental and/or public health benefits, specifically, conservation. Respondent shall replace City water used to slurry fly ash with water pumped from Respondent’s underground mine, which is currently pumped and discharged to the Missouri River, at a cost of no less than Seventy-Seven Thousand Nine Hundred and Eleven Dollars (\$77,911), in accordance with the Respondent’s SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

57. The total expenditure for the SEPs shall be no less than \$77,911 and the SEP shall be completed no less than ninety days from the effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

58. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented; and
- (ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.
- (iii) All reports shall be directed to the following:

Cynthia Sans
U.S. Environmental Protection Agency
Region 7
11202 Renner Boulevard
Lenexa, Kansas 66101

59. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, and other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled checks/drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

60. Respondent agrees to the payment of stipulated penalties as follows: In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraphs 56 and 57 of this CA/FO and/or to the extent that the actual expenditures of the SEP does not equal or exceed the cost of the SEP described in paragraphs 56 and 57 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) and (c) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraphs 56 and 57 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Sixty-Two Thousand Five Hundred and Sixty-Three Dollars, minus any documented expenditures determined by EPA to be acceptable for the SEP.
- b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 58, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250) per day.

- c. If the SEP is not completed in accordance with paragraphs 56 and 57 of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

61. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

62. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CA/FO.

63. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

64. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

65. Any public statement in print, film or other communications media, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

66. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in paragraph 60 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

67. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

68. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CA/FO and to legally bind Respondent to it.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-One Thousand Two Hundred and Forty-Six Dollars (\$21,246) to be paid in full no later than 30 days after the effective date of this CAFO.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.

3. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

This payment shall reference docket number CWA-07-2015-0014.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

5. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

General Provisions

6. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

8. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

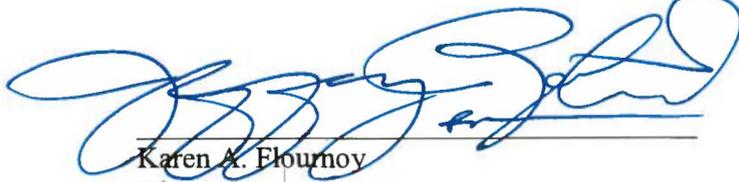
9. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the Regional Judicial Officer and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

10. Respondent and Complainant shall bear their respective costs and attorney's fees.

11. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

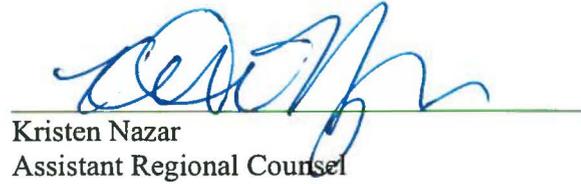
COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/17/15
Date



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

9/16/15
Date



Kristen Nazar
Assistant Regional Counsel

RESPONDENT:
AUDOBON MATERIALS, LLC d/b/a
CENTRAL PLAINS CEMENT COMPANY, LLC

6-12-15
Date

David Challacombe

Name (Print) David Challacombe

Title President

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

9-28-15
Date

IN THE MATTER OF Audobon Materials, LLC d/b/a Central Plains Cement Company LLC,
Respondent
Docket No. CWA-07-2015-0014

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by email to:

Steve Kidwell

Director, Public Affairs

Eagle Materials Inc.

skidwell@eaglematerials.com

9/28/15



Kathy Robinson
Hearing Clerk, Region 7