

JILL BAILEY

MISSOURI

received
Via fax on
9/25/2017

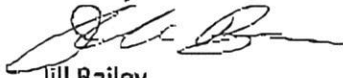
September 25, 2017

Clerk of the Environmental Appeals Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue NW
Mail Code 1103M
Washington, DC 20460-0001

Clerk of the Board,

Please find enclosed the motion for reconsideration or clarification with attachment and certification of service. I did not hear back from either of the other parties on their agreement or disagreement with the motion for reconsideration or clarification.

Sincerely,



Jill Bailey
Missouri
573-228-0147

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

Motion for reconsideration or clarification

Though I realize that you sparingly review NPDES permits(44 Fed. Reg. 32,887, June 7, 1979), this is an important situation that you should allow to be heard by your Board. I am filing this motion for reconsideration or clarification on NPDES Appeal No. 17-04 under 40 subsection CFR 124.19(m). Stay of this filed NPDES appeal 17-04 didn't occur upon filing as required under 40 CFR subsection 124.60 (b)(1), and 40 CFR subsection 124.16(a)(1). As you mentioned in your dismissal I am trying to protect the environment from discharges from the facility. The Clean Water Act and the NPDES permitting language in 40 CFR allow discharges with NPDES permits, but the Wild and Scenic Rivers Act and the Outstanding National Resource Water laws at state and federal levels do not, and the latter two were violated with this MO-G491369 NPDES permit. If you are not going to take jurisdiction for appeal/termination of this permit upholding all federal laws of this motion/appeal, and the Missouri DNR is not going to take jurisdiction to uphold the WSRA, ONRW laws and the CWA, and EPA is not going to have oversight and take away Missouri DNR authority to issue NPDES permits citing violations in permitting, then the laws that protect the population and the environment are being violated by the Environmental Appeals Board of EPA, the Missouri DNR and the EPA. Furthermore, when Missouri DNR says it is not within their jurisdiction to implement the WSRA, then perhaps it is not within their jurisdiction to implement the CWA, therefore whatever authority they held in issuing this permit is null and void, which it should be given the violations that occurred upon issuance of MO-G491369. If the WSRA is not in Missouri DNR's jurisdiction is upholding any federal law in Missouri DNR's jurisdiction? Missouri DNR said they do not have the funding to come and inspect for pollution that may have spilled after the April flooding of the facility by the Eleven Point River. This is not a proper use of federal NPDES funding through state authorization under CWA 33 USC subsection 1342(a)(5). How often does MDNR inspect the NPDES permitted facilities? I am aware of three Air and Water DNR inspections since 2013, one was alongside EPA. If the Missouri DNR cannot uphold the WSRA when permitting a facility with an NPDES on a Wild and Scenic River, they should not be the permitting authority of NPDES permits(33 USC subsection 1342(a)(5). Whose jurisdiction is it to protect Wild and Scenic Rivers from NPDES permitting? For Missouri DNR to abide by the CWA but not the Wild and Scenic Rivers Act is wrong. The Regional Administrator also violated the Wild and Scenic Rivers Act by not having oversight of this state issued NPDES permit(MO-G491369). Whose jurisdiction is it to protect a Wild and Scenic River? The federal government is saying "not mine", the state government is saying "not mine", and Forest Service, the designated protector of the River, commented on the permit saying essentially that the facility should monitor itself. Whose jurisdiction is it to protect the Eleven Point River? Not you, the Appeals Board, not USFS, not MDNR, and not EPA.

We have had state and federal authorities/employees(DNR and USFS) working in their offices in this town during the tank farm's existence. Regional administrator is the Region of the permitted facility's regional administrator or his designee

The Regional Administrator/Administrator/Director/State director titles are problematic regarding the four program/permits that come before your appeals board in 40 CFR subsection 124.19. The definitions in the four programs/permits are not always uniform. The definition given for administrator in 40 CFR 270.2 includes an authorized representative, which could be a state authorized permitting program head as in my appeal. The Regional Administrator is also by definition in 40 CFR subsection 260.10 also his designee which could be a state permitting program head as in my appeal. If you/EPA Environmental Appeals Board don't acknowledge NPDES of Coastal Energy in NPDES appeal number 17-04, but rather call the permit a state issued operating permit, then you will not acknowledge that it is not in your

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authority to hear general NPDES permits in 40 CFR subsection 124.19(o), of which this is also one. It does not say "individual permit" at the beginning of 40 CFR subsection 124.19, in fact it is silent on whether it is referring to a general permit or an individual permit, but in section "o" the term general permit is brought up for the first time. Because of this confusion in the federal law and the lack of the term individual permit, the Board should hear this appeal. 40 CFR 124.2 Definition of permit in appeal filed under 40 CFR subsection 124.19:

Permit means an authorization, license or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts of 122, 123, 144, 145, 233, 270, and 271 of this chapter. "Permit includes RCRA "permit by rule"(subsection 270.60), RCRA standardized permit(270.67), UIC area permit(subsection 144.33), NPDES or 404 "general permit" (subsection 270.61, 144.34, and 233.38). Permit does not include RCRA interim stats(subsection 270.70), UIC authorization by rule(subsection 144.21), or any permit that has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit".

NPDES permit Program definitions according to

[scdhec.gov\(http://www.scdhec.gov/Environment/WaterQuality/NPDES/Definitions/index.htm\)](http://www.scdhec.gov/Environment/WaterQuality/NPDES/Definitions/index.htm): NPDES permit program definitions administrator means the administrator of the EPA or any employee of the Agency to whom the Administrator may by order delegate the authority to carry out his functions under 307(a) of CWA or any person who shall by operation of law be authorized to carry out such functions. 40 CFR subsection 260.10 definition of Regional Administrator means the Regional Administrator for the EPA Region in which the facility is located, or his designee

In 33 USC 1342 NPDES (b) State Permit programs (3) there is no mention of appeal authority over the appeals of state issued NPDES permits. I realize the CWA gives the states authority to issue NPDES permits but who gives them the authority to hear appeals instead of appeals of NPDES permits going to you/EPA Environmental Appeals Board? The Clean Water Act gives states authority to issue NPDES permits but is silent on states hearing appeals of NPDES permits, the WSRA and 40 CFR NPDES section is silent on this too. 40 CFR subsection 122.26(c)(1) also defines Director as Regional Administrator or State Director, as the context requires or an authorized representative

In 40 CFR subsection 124.16(b)(2) the title state director used and defined in 40 CFR subsection 124.2 is the chief administrative officer of any state, interstate, or Tribal agency operating an approved program, or the delegated representative of the state director(which could in my appeal be Bostic)

In Coastal Energy's Clean Water Act violation in 2014(<https://echo.epa.gov/enforcement-case-report?id=07-2016-0243>), the EPA did a settlement with the company. In Coastal Energy Corporation's Missouri Court Order, which followed the settlement, where the DNR/State Attorney General/County of Howell issued the order. In the current permit violation of this NPDES permit, US EPA should hear the appeal because it is a federal permit and because the main laws I cite in my appeal as being violated are federal laws, even those where states are written into the laws as the permitting authority specifically within the laws violated.

Missouri will issue two significant permits to Coastal Energy Corporation. One being an air permit and one being an National Pollutant Discharge Elimination System permit. Though they are both issued under the Clean Air Act and the Clean Water Act respectively, the air permit is not a national permit, but the NPDES is. The state DNR issues it by authority given to it by the federal EPA as a stormwater basic operating permit, which in this case includes process wastewater, getting further from its intention in federal law/CWA/NPDES codified in Title 40). The word national is even in the title of the permit issued by authority of the state. It is a national permit. The appeal for this National Pollutant Discharge Elimination System Permit should be heard by EPA because Missouri DNR isn't doing its job delegated

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under the Clean Water Act in issuing NPDES permits or inspecting the facility for harm to the environment and human health. This is, I will disagree with the Board, not only a Missouri State Operating Permit as you indicate in your dismissal, but one permit, sometimes issued by a state, and sometimes issued by EPA, but always an NPDES permit as is indicated on this EPA site regarding this Coastal Energy Facility(<http://echo.epa.gov/detailed-facility-report?fid=110044893915>). It is an NPDES disguised as a state operating permit, further and further from the truth, further and further from protecting what the Clean Water Act meant to be protected. I am not sure when the making of federal permits into state permits attempts began or for what reason your Board is not acknowledging the NPDES status of this permit. Still, it is an NPDES permit. Wild and Scenic Rivers Act is being upheld elsewhere by federal courts/authorities (Idaho, N. Fork Owyhee River Wild and Scenic River and Chattooga, Selway & Middlefork Clearwater Wild and Scenic River). EPA Environmental Appeals board citing of cases of state issued permits is not a binding precedent because higher courts with the same federal jurisdiction in cases involving similar issues were allowed to be heard i.e. state permit before a federal appeals court(United States Court of Appeals for the Second Circuit in the case of Constitution Pipeline Co. v. New York State Department of Environmental Conservation). Furthermore, since at issue here is a Wild and Scenic River with a federally permitted water resources project occurring on it, your Board should hear this case based on binding precedent(United States Court of Appeals for the Ninth Circuit High Country Resources and Glacier Energy Company v. Federal Energy Regulatory Commission).

Grounds:

Missouri DNR broke federal laws regarding state program for NPDES

Benzene release at facility

Negligence

Non-compliance of facility

There has been a haul road graded through the Eleven Point River which the USACE has told me they are checking on a site inspection for 404 permitting

General permits not on DNR website RSMo 644.051 17(6)

RSMo 644 17(2) notice of intent was not posted, the column *intent to issue or intent to deny* that DNR now has on NPDES draft permits was a recent addition, after the comment period for the tank farm, Coastal Energy

The Clean Water Act was violated by Coastal Energy in 2014

Missouri clean water laws were violated by Coastal Energy requiring a court order

Clean Water Act was violated by DNR in this permit by backsliding

EPA found Coastal Energy Facility discharging into the Eleven Point River in 2014 inspection

Spills have occurred at Coastal Energy Corporation and its companies, previous companies, company sites, and current supplier

Spills associated with facility owner:

Spill 1

Former location of David Montgomery of Coastal Energy Willow Springs MO

The April 9th 2015 issue of the Cabool Enterprise had a front page story of an oil spill at David Montgomery's former location on Highway 181 in Cabool, MO. The headline of the story was "EPA coordinating clean up of grease/oil spill along Highway 181 south of Cabool". It said, "The property was

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many years ago the site of an asphalt facility and had two catch basins or ponds to contain possible spills." This is the same company(s) from spill no. 1

I sent earlier today with the Secretary of State having Montgomery as the registered agent

-when Montgomery

and his former boss Clarence Stapp

Wash U Mechanical Engineer

<https://magazine-archives.wustl.edu/Spring10/Classmates.html>

were running businesses out of Springfield and Cabool which are described in this article from the Houston Herald when Montgomery's company then built a new headquarters in Willow Springs in 1986- though some reports are that Montgomery moved to Willow Springs in 1979-81 timeframe, including his own company website.

The Houston Herald from Houston, Missouri on August 7, 1986 ...

<https://www.newspapers.com/newspage/178651824/>

Aug 7, 1986 - Coastal Energy has an office in Cabool and a truck maintenance facility West of Springfield

Spill 2

321%20N%20FORT%20(PDF)_201404241620065991.pdf attached

Spill 3

3 David Montgomery Coastal Energy Willow Springs, MO company Coastal Emulsions Miller MO

**Spill no. 3 David Montgomery Coastal Energy Willow Springs,
MO company Coastal Emulsions Miller MO**

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

Missouri Department of Natural Resources

Environmental Services Incident Data

[<< Back to results](#)

Detail Information for Incident Number: 0312020905LJL

Discovery Date: 2017-11-01

Discovery Time:

Call Date: 2003-12-02

Call Time: 09:05:00

Incident Date:

Incident Time:

Location: Highway 96

City: Miller

County: Lawrence

State: MO

Regional Office: SWRO

Potential Responsible Party: Coastal Energy Corporation

Potential Responsible Party Contact: Gordon Pulium

Cause: Other

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

Cause Sub-Category:

Property Use: Manufacturing Facility

Property Use Sub-Category:

Collection Station:

Latitude: 37.23154830932617

Longitude: -93.80313110351562

GPS Method: Address Matching - Other Address Matching

UTM Northing: 4120861.3955413173

UTM Easting: 428757.19226533675

UTM Zone: 15

UTM EPE: NO

Petroleum Storage Tank Insurance Fund: NO

Household Hazardous Waste: NO

Chemical Pickup: NO

Continuous Release: YES

Historic Release: NO

Hazardous Substance Declaration Issued: NO

Email: NO

Issuer:

Issue Date:

Issue Time:

Chemicals associated with this incident:

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

Category: Other Air Pollutant

Chemical Detail: Nitrogen oxide (NO)

Quantity: 30 Pound(s)

For additional information concerning this incident, please submit an opens record request to the Department's Custodian of Records. The Custodian of Records may be reached at 573-751-3443 or by email at custodianofrecord@dnr.mo.gov or visit <https://dnr.mo.gov/sunshinerequests.htm>

Spill 4

Environmental Services Incident Data

Detail Information for Incident Number: 9904120853BJA

Discovery Date: 1999-04-12

Discovery Time:

Call Date: 1999-04-12

Call Time: 08:53:00

Incident Date:

Incident Time:

Location: MANUFACTURING Facility on Highway 96

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

City: Miller

County: Lawrence

State: MO

Regional Office: SWRO

Potential Responsible Party: Coastal Emulsions of Missouri

Potential Responsible Party Contact: Gordon Pulliam

Cause: Discharge/Air Emission

Cause Sub-Category:

Property Use: Manufacturing Facility

Property Use Sub-Category:

Collection Station:

Latitude: 37.188140869140625

Longitude: -93.8305892944336

GPS Method: Other - Unknown

UTM Northing: 4116066.7712008245

UTM Easting: 426279.2121212194

UTM Zone: 15

UTM EPE: NO

Petroleum Storage Tank Insurance Fund: NO

Household Hazardous Waste: NO

Chemical Pickup: NO

Continuous Release: NO

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

Historic Release: NO

Hazardous Substance Declaration Issued: NO

Email: NO

Issuer:

Issue Date:

Issue Time:

Chemicals associated with this incident:

Category: Other Air Pollutant

Chemical Detail: NITROGEN OXIDES (NOX)

Quantity: 10 Pound(s)

For additional information concerning this incident, please submit an opens record request to the Department's Custodian of Records. The Custodian of Records may be reached at 573-751-3443 or by email at custodianofrecord@dnr.mo.gov or visit <https://dnr.mo.gov/sunshinerequests.htm>

Spill 5

spill of Coastal Energy supplier doing business as Petro Logistics, 1330 gallons hot liquid asphalt in Fenton MO

Spill link:

<http://dnr.mo.gov/env/esp/meerts/detail/1508121135DLK>

The Petro Logistics carries Coastal products

Permit applicant: Coastal Energy Corporation
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Permit number: MO-G491369

Petro Logistics not in Missouri Secretary of State database, but same owner Lianne Reizer

owns All American Transport, LLC which is. This link shows connection

to David Montgomery/Coastal Energy:

<http://www.petrologisticsllc.com/products>

Environmental Services Incident Data

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Detail Information for Incident Number: 1508121135DLK

Discovery Date: 2015-08-12

Discovery Time: 07:00:00

Call Date: 2015-08-12

Call Time: 11:35:00

Incident Date: 2015-08-12

Incident Time: 07:00:00

Location: North Highway Drive and Bowles Avenue

City: Fenton

County: St. Louis

State: MO

Regional Office: SLRO

Potential Responsible Party: Petro Logistics, LLC

Potential Responsible Party Contact: Lianne Reizer

Cause: Mech. Malfunction/Failure

Cause Sub-Category:

Permit applicant: Coastal Energy Corporation

Permit facility: Coastal Energy Corporation

Permit number: MO-G491369

Property Use: Road/Highway/ROW

Property Use Sub-Category:

Collection Station:

Latitude:

Longitude:

GPS Method: Address Matching - Other Address Matching

UTM Northing:

UTM Easting:

UTM Zone: 15

UTM EPE: NO

Petroleum Storage Tank Insurance Fund: NO

Household Hazardous Waste: NO

Chemical Pickup: NO

Continuous Release: NO

Historic Release: NO

Hazardous Substance Declaration Issued: NO

Email: NO

Issuer:

Issue Date:

Issue Time:

Chemicals associated with this incident:

Category: Other Petroleum Product

Chemical Detail: Hot Liquid Asphalt

Quantity: 1330 Gallon(s)

For additional information concerning this incident, please

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

submit an

opens record request to the Department's Custodian of Records.

The

Custodian of Records may be reached at 573-751-3443 or by
email at

custodianofrecord@dnr.mo.gov or visit

<https://dnr.mo.gov/sunshinerequests.htm>

Spill 6

finding of Spill by EPA Discharge into Eleven Point River Willow Springs, MO(in appellate brief and attachment already on file with EAB)

I am awaiting a FOIA request that should be fulfilled the 27th of September from EPA 7 regarding state authorization information of DNR to issue NPDES permits

No Section Seven determination was sought by DNR/EPA. Subsection 7(a) Wild and Scenic Rivers Act codified in 16 U.S.C. subsection 1278 requires that agencies issuing federal permits for a water resource project on Wild and Scenic Rivers above the designated area consult with Congress and the Secretary of USDA regarding the effects to the values of the Wild and Scenic River(Protection from and to not diminish the values that were present at time of designation). By consulting these parties the permitting on a Wild and Scenic River is checked with the parties responsible for the Wild and Scenic River's designation and a representative body of the United States population/Congress and the party responsible for the protection of the Eleven Point River in Missouri, USFS. These parties were not notified, or other parties of federal government as set forth in Missouri statute 644 RSMo, which are USACE, and NPS.

I am not aware of the insurance coverage Coastal Energy is required to have in the case of a major spill at the facility, like the fairly recent spill at Ergon Asphalt Company in Corpus Christi. Insurance coverage would be so that the state isn't required to clean it up, if it even can be cleaned up.

I am not aware whether DNR is doing a health risk assessment on this facility. I would also like to know where I could see or if EPA has done a performance review of Missouri DNR.

The state DNR issued an UIC as an NPDES to Phillips 66 in Mount Vernon, I commented on the permit. The Air Permit for Coastal in Willow Springs has the exact same facility completion date, December 31, 1969, as this Phillips 66 facility, according to DNR documents, and Coastal has a company, Coastal Emulsions, just down the highway from Phillips. I

Legal authority:

Wild and Scenic Rivers Act 16 US Code 1271 et seq, 36 CFR 297

Clean Water Act

40 CFR NPDES federal laws describing a federal permit issued under the authority of the Clean Water Act

40 CFR Protection of the Environment

33 USC subsection 1342(o)(1) and (3) Antibacksliding CWA

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33 USC subsection 407 deposit of refuge in navigable waters generally or into any tributary of navigable water issued under 407 of this title

40 CFR subsection 122.26(a)(1)(v) 2014 EPA finding of discharge into the Eleven Point River

40 CFR subsection 122.5(a)(1) Coastal Energy was not compliant with NPDES permit during its term, CWA violation 311

40 CFR subsection 122.5(b) protects from any exclusive privilege in permitting

40 CFR subsection 122.5(c) The issuance of this permit does not authorize injury to persons

40 CFR subsection 124.19 when addressing the Regional Administrator response mentioned definition of violations of CWA, WSRA, and 40 CFR violations in state issued program of any exclusive privilege permitting in this NPDES permit MO-G491369

40 CFR subsection 122.26 (a)(6)(i) stormwater discharges must be covered by an individual permit, MO-G491369 was a general permit

Clean Water Act 309(c)(1) gives protection against negligently violating any permit conditions of sections 301, 302, 306, 307, 308, 311(b)(3), or permits issued under 402 of title

40 CFR subsection 122.64 (a)(3) protects human health and the environment from the chemicals present at this facility with potential to harm the air and water. This law allows for the permit to be terminated and is applicable to state programs for issuing NPDES permits.

Negligence-any reasonable person would not approve this facility with its toxic/hazardous chemicals near a federally protected river or with emissions this close to residents/Willow Springs community
Exclusive privilege is prohibited in permit granting

I contacted U.S. Health and Human Services and they in turn contacted EPA 7 who after checking with the Missouri Health Department for status of the situation, encouraged me to continue to work with the Missouri Health Department regarding the health of the community/residents near Coastal Energy.

I had commented to the state on a general permit 940000(I erred in my appeal brief by calling it 490000, which I was concerned about Coastal Energy tagging on to, which seemed to be an option in the conditions of that permit. This looks to be precisely what has been done with the

cement/limestone/asphalt general permit MO-G491369. The state was unclear in their explanation to me whether the other NPDES permit of Coastal Energy, which is site specific, is still in effect for the company. But Coastal Energy Corporation was issued this new general permit which I'm appealing. I would argue that special preference has been given to Coastal Energy by Missouri DNR because there is a cement company, Continental Cement Company, whose permit has expired before Coastal's and they were not moved over into this category of general permitting that Coastal was, though that was MDNR's explanation of why Coastal was issued this general permit, explaining that it was a permit now available to them. How did the Limestone permit change? What made it now available to Coastal and did the general permit for Limestone/Cement and Asphalt get posted 180 days ahead of time on DNR web site as a new permit coming out as required by 644 RSMo? The cement company to my knowledge has not received a new permit, but I cannot check, nor can I see Coastal's MO-G491369 because general permits other than the template are not posted to DNR's website which appears also to be a violation of 644 RSMo. The Missouri Department of Natural Resources processing Coastal Energy before a permit that expired 5 months ahead of Coastal Energy appears to be an exclusive privilege in permitting and a violation of 40 CFR 122.5(b) Why couldn't Coastal Energy do a general permit before(2012). What changed about it? Was it tailored for Coastal?

Relief:

Termination of NPDES permits MO-G491369 and MO0136883

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Funding for Missouri to administer the NPDES program should be revoked and NPDES program authority remain with Region 7 EPA

Jill Bailey
702 N. Center St.
Willow Springs, MO 65793
573-228-0147
Jbailey320@gmail.com

Certificate of service 4

Permit applicant: Coastal Energy Corporation
Permit facility: Coastal Energy Corporation
Permit number: MO-G491369

Certificate of Service

Copies of motion for reconsideration or clarification were sent electronically/fax and by UPS mail to the following on 9.23.17:

Jackson Bostic

Regional Director

Missouri DNR

2155 N. Westwood Blvd

Poplar Bluff, Missouri 63901

David Montgomery

Coastal Energy Corporation

One Coastal Dr.

Willow Springs, MO 65793

Jill Bailey
702 N. Center St.
Willow Springs, MO 65793
573-228-0147
jbailey320@gmail.com