

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. CWA 07-2010-0158
)	
RIVER PRODUCTS COMPANY, INC.)	
)	
IOWA CITY, IOWA)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
)	
Respondent,)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (“Complainant”) and River Products Company, Inc., (“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.

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 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.

4. Respondent is River Products Company, Inc., a corporation authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

5. The CWA was 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).

6. 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, 33 U.S.C. § 1342, 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.

7. 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. Section 502 of the CWA states that “navigable waters” means the waters of the United States.

8. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include, *inter alia*, sewage, garbage sewage, sludge, biological materials, and industrial wastewater discharged to water.

9. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362 (14) to include “any discernable, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

10. To implement Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.1, a NPDES permit is required for any point source that discharges or proposes to discharge into waters of the United States.

11. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams and tributaries thereto.

12. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The IDNR implemented a General Permit for the discharge of stormwater under the NPDES Permit No. 3 in October 2007. The permit governs stormwater discharges associated with industrial activity for asphalt plants, concrete batch plants, crushing plants, and construction sand and gravel facilities.

Factual Background

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

15. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility engaged in the operation of an asphalt plant, concrete batch plant, crushing plants and/or construction sand and gravel facility known as River Products Company, Inc., Conklin Quarry, located at 3273 Dubuque Street N.E., Iowa City, Iowa (the Site) with a SIC code of 1422.

16. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's facility and flow into Muddy Creek and the Iowa River. The runoff and drainage from Respondent's facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

18. 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).

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

20. 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).

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

22. On or about October 24, 2007, Respondent resubmitted a Notice of Intent (“NOI”) for coverage under Iowa General Permit No. 3.

23. Permit No. 1159-0955 for the rock crushing, screening, and processing plant was reissued to Respondent and will expire on October 1, 2012.

24. On August 27 and 28, 2009, 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 compliance with the CWA.

Findings of Violation

Failure to Install Best Management Practices

25. The facts stated in paragraphs 1 through 24 above are herein incorporated.

26. General Permit No. 3, Part III, Section C – “Stormwater Pollution Prevention Plans (“SWPPP”) required Respondent to develop a SWPPP that identifies potential sources of pollution which may reasonably be expected to effect the quality of stormwater discharges associated with industrial activity from the facility. The SWPPP was also to identify and ensure implementation of practices which will be used to reduce pollutants in stormwater discharges.

27. EPA’s inspection on August 27 and 28, 2009, revealed an outfall on the east side of the quarry near the access road leading to Dubuque Street with inadequate management practices in place to prevent stormwater runoff. Water was flowing from this area, around a berm to a woodland area, then to Muddy Creek before entering the Iowa River. The SWPPP did not describe best management practices (“BMPs”) for the area and inadequate BMPs were present.

28. EPA’s inspection on August 27 and 28, 2009, revealed an outfall near the facility’s explosive magazine. Water was flowing down a hill through a vegetative filter to the Iowa River. The SWPPP did not describe BMPs and maintenance for the outfall near the explosive magazine and adequate BMPs were not present.

29. By failing to comply with the terms set forth in Respondent’s NPDES Permit, the Respondent violated the terms and conditions of its NPDES Permit, and as such, violated Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations.

Inadequate SWPPP and Failure to Update the SWPPP

30. The facts stated in paragraphs 1 through 29 above are herein incorporated.

31. General Permit No. 3, Part III.C.4.B states, “Each facility covered by this permit shall develop a description of stormwater management controls appropriate to the facility, and

implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility.... .”

32. The SWPPP available for review during the inspection contained a list of the non-structural controls and practices but did not contain adequate documentation that the controls had been implemented.

33. General Permit No. 3, Part III.C.4.A “Description of Potential Pollutant Sources” states, “Each plan shall provide a description of potential sources which may be reasonably expected to add significant amounts of pollutants to stormwater discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include at a minimum: a site map showing an outline of the drainage area of each stormwater outfall; each existing structural control measure to reduce pollutants in stormwater runoff; and each surface water body.”

34. The SWPPP available for review during the inspection did not describe the outfall on the east side of the quarry or the outfall near the facility’s explosive magazine.

35. General Permit No. 3, Part III.C.4.B.(7) “Sediment and Erosion Prevention” states, “The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.”

36. The SWPPP available for review during the inspection did not adequately address all areas on the site which have a high potential for erosion nor did it identify measures to limit erosion. The inspector observed areas on the site that have runoff to the Muddy Creek and the Iowa River. These areas should have been addressed in the SWPPP.

37. By failing to comply with the terms set forth in Respondent’s NPDES Permit, the Respondent violated the terms and conditions of its NPDES Permit, and as such, violated Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations.

CONSENT AGREEMENT

38. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

39. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

40. Respondent neither admits nor denies the factual allegations and findings set forth above.

41. 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 the Final Order portion of this CAFO.

42. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

44. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

45. This CAFO 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.

46. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent is in compliance with Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, with respect to the facility located at 3273 Dubuque Street, NE, Iowa City, Iowa 52244.

47. The effect of settlement described in paragraph 45 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 46 above, of this CAFO.

48. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty-One Thousand Dollars and No Cents (\$21,000.00) as set forth in Paragraph 1 of the Final Order.

49. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

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 and No Cents (\$21,000.00) due within thirty (30) days of the effective date of this CAFO.

2. 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-07-2010-0158.

Copies of the check shall be mailed to:

Sara Hertz Wu
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

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. This Order shall be entered and become effective only after the conclusion of the period of 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

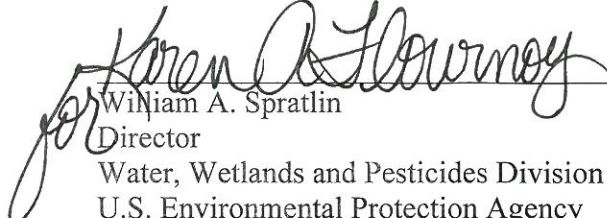
9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. 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

11-15-10

Date



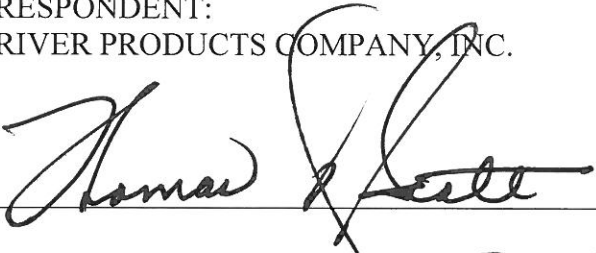
William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7



Sara S. Hertz Wu
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
RIVER PRODUCTS COMPANY, INC.

10/04/10
Date



Name (Print) THOMAS R. SCOTT

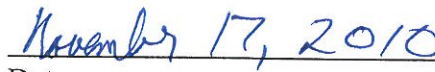
Title PRESIDENT & CEO

IN THE MATTER of River Products Company, Inc.
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IT IS SO ORDERED. This Order shall become effective immediately.



Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7



Date

IN THE MATTER OF River Products Company, Inc., Respondent
Docket No. CWA-07-2010-0158

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Sara S. Hertz Wu
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Thomas Scott
Todd Scott, Esq.
River Products, Co., Inc.
3273 Dubuque Street, N.E.
P.O. Box 2120
Iowa City, Iowa 52244-2120

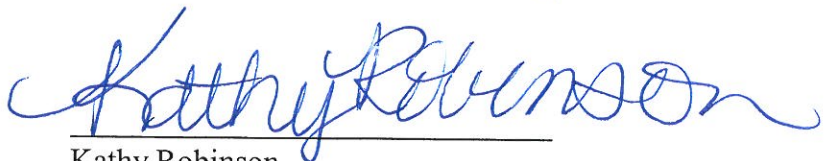
Jay Eaton, Esq.
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909 West Main Street, Suite 4
Manchester, Iowa 52057

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353

Dated: 11/18/10



Kathy Robinson
Hearing Clerk, Region 7