

6. To implement Section 402 of the CWA, EPA promulgated regulations codified as 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a National Pollutant Discharge Elimination System (“NPDES”) permit is required for the discharge of pollutants from any point source into waters of the United States.

7. The Nebraska Department of Environment and Energy (“NDEE”) is the state agency with the authority to administer the federal NPDES program in Nebraska.

8. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

Industrial Stormwater Discharges

9. 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) requires, in relevant part, that a discharge of stormwater associated with industrial activity comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

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

11. 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.

12. 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 materials storage areas at an industrial plant.”

13. Included in the categories of facilities considered to be engaging in “industrial activity” are facilities in Standard Industrial Classification (“SIC”) Code 3531. *See* 40 C.F.R. § 122.26(b)(14)(xi).

Allegations of Fact and Conclusions of Law

14. Con-E-Co is a corporation chartered under the laws of the state of Nebraska.

15. Respondent is a corporation, so is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. At all times relevant to this action, Respondent owned and/or operated the facility located at 237 North 13th Street, Blair, NE 68908 (the “Facility”).

17. The Facility engages in activities that fall within SIC Code 3531. Activities that occur at the Facility include, but are not limited to, the manufacturing and assembly of portable concrete plants.

18. The Missouri River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The relevant segment of the Missouri River is impaired by *E. coli*, arsenic, and sulfate within the meaning of section 303(d) of the CWA.

Pretreatment Discharges

19. Effluent discharged from the Facility through Outfall 001 is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

20. Outfall 001 at the Facility is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Outfall 001 discharges to the Missouri River via the city of Blair, Nebraska’s publicly owned treatment works.

22. The Facility is a “point source” that “discharges pollutants” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

23. The Facility’s discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. The Facility is authorized to discharge effluent through Outfall 001 in accordance with the requirements of NPDES Permit No. NE-0137416. That permit was reissued on January 1, 2018, and expired on March 31, 2023 (the “2018 NPDES Pretreatment Permit”). The current NPDES permit became effective April 1, 2023, and expires March 31, 2028 (the “2023 Pretreatment NPDES Permit”).

25. As relevant here, the 2018 NPDES Pretreatment Permit and the 2023 NPDES Pretreatment Permit require effluent discharged through Outfall 001 to maintain a daily minimum pH of 5.5. Standard Condition 7 of the 2018 NPDES Pretreatment Permit and the 2023 NPDES Pretreatment Permit requires Respondent to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

Industrial Stormwater Discharges

26. Industrial activities take place at both the east and west sections of the Facility, which is divided by a road. At the east section, raw materials are received and stored outdoors; raw metal is shaped, cut, welded, and sanded to the desired specifications indoors. At the west section, parts undergo painting and assembly, then the final products are stored outdoors.

27. Some stormwater from the east section of the Facility flows east directly into a stormwater swale, and the remainder flows several feet through a ditch into the swale. Stormwater from the swale flows approximately 1.3 miles via ditches to reach an unnamed tributary, then travels 0.5 miles through that unnamed tributary to the Missouri River.

28. Stormwater from the west section of the Facility flows offsite at multiple points, enters the city storm sewer system via curb inlets, and then flows to the stormwater swale and to the Missouri River as described in Paragraph 28.

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

30. Stormwater runoff from industrial activity at the Facility 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).

31. Respondent’s discharge of pollutants, including discharges of stormwater associated with 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.

32. The Facility is authorized to discharge stormwater associated with industrial activities under NDEE General Permit No. NER-910535. The General Permit was issued on July 18, 2016, and expired on March 31, 2022 (the “2016 Stormwater Permit”). The current General Permit became effective April 1, 2022, and expires March 31, 2027 (the “2022 Stormwater Permit”).

The EPA Inspection

33. On April 19-20, 2022, EPA personnel acting pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Facility to determine Respondent’s compliance with the 2016 Stormwater Permit, the 2022 Stormwater Permit, the 2018 NPDES Pretreatment Permit, and the CWA.

34. During the inspection, the EPA inspector reviewed Respondent’s records and obtained copies of documents related to the 2016 Stormwater Permit, including but not limited to the Facility’s stormwater pollution prevention plan (“SWPPP”) and inspection records. The EPA inspector also toured the facility, observed discharge locations, collected grab samples of process wastewater, and photographed various stormwater-related areas.

35. A copy of the inspection report was sent to Respondent by the EPA on June 23, 2022.

Findings of Violation

Count 1: Pretreatment Discharge

36. The facts alleged above are incorporated by reference.

37. In December 2018, Respondent failed to properly operate and maintain a pH monitor used to achieve compliance with the conditions of the 2018 NPDES Pretreatment Permit.

38. In December 2019, March 2020, and June 2021, the Facility discharged effluent through Outfall 001 with a pH below the minimum required by the 2018 NPDES Pretreatment Permit.

39. Respondent's violation of the 2018 NPDES Pretreatment Permit's effluent limits and standard conditions is a violation of the limitation and conditions of a NPDES permit issued pursuant to CWA Section 402 and Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count 2: Failure to have a Signed, Accurate, and Adequate SWPPP

40. The facts alleged above are incorporated by reference.

41. Part 5.1.7 of the 2016 Stormwater Permit and Part 5.1.7 of the 2022 Stormwater Permit require the SWPPP to be signed and dated.

42. Part 5.1.1 of the 2016 Stormwater Permit and Part 5.1.1 of the 2022 Stormwater Permit require the SWPPP to identify staff members (by name or title) that comprise the facility's stormwater pollution prevention team as well as their individual responsibilities.

43. Part 5.1.5.2 of the 2016 Stormwater Permit and Part 5.1.5.2 of the 2022 Stormwater Permit require the SWPPP to document procedures for performing, as appropriate, routine, visual, and comprehensive inspections, as specified in Parts 4.1, 4.2, and 4.3 of the 2016 Stormwater Permit and the 2022 Stormwater Permit. Both the 2016 Stormwater Permit and the 2022 Stormwater Permit require the SWPPP to identify, among other things, schedules for conducting inspections and specific items to be covered by the inspection.

44. Respondent's SWPPP:

- a. Is neither signed nor dated;
- b. Does not identify all current staff members that comprise the facility's stormwater pollution prevention team, instead listing some personnel no longer employed by Respondent in Section 5.0 of the SWPPP; and
- c. Does not correctly detail site inspection frequency and inspection type as required by Parts 4.1, 4.2, and 4.3 of the 2016 Stormwater Permit and the 2022 Stormwater Permit.

45. Respondent's failure to include the SWPPP elements required by Parts 5.1.7, 5.1.1, and 5.1.5.2 of the 2016 Stormwater Permit and 2022 Stormwater Permit are violations of the limitations and conditions of a NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3: Omissions in SWPPP Site Map

46. The facts alleged above are incorporated by reference.

47. Section 5.1.2 of the 2016 Stormwater Permit and Section 5.1.5.2 of the 2022 Stormwater Permit requires the SWPPP to include a site map with specified elements, including:

- a. Locations of potential pollutant sources identified under Part 5.1.3.2;

b. Municipal separate storm sewer systems, and where the covered facility's storm water discharges to them; and,

c. Locations of all storm water monitoring points.

48. The site map contained in Respondent's SWPPP does not include the elements set forth in Paragraph 47.

49. Respondent's failure to include a site map that complies with the 2016 Stormwater Permit and the 2022 Stormwater Permit in the SWPPP are violations of the limitations and conditions of a NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4: Failure to Conduct Employee Training

50. The facts alleged above are incorporated by reference.

51. Part 2.1.2.9 of the 2016 Stormwater Permit and Part 2.1.2.9 of the 2022 Stormwater Permit require Respondent to train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit, including all members of the Pollution Prevention Team. Training must cover both the specific control measures used to achieve effluent limits and monitoring, inspection, planning, reporting, and documentation requirements in the permit.

52. Section 7.0 of the SWPPP states that Con-E-Co provides its employees annual information and training on preventing stormwater pollution in their work area and maintains documentation of that training.

53. Respondent has not trained all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of the permit.

54. Respondent's failure to train personnel on the SWPPP is a violation of the SWPPP and the General Permit, and as such, are violations of the limitations and conditions of a NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5: Failure to Document and/or Conduct Site Inspections and Compliance Evaluations

55. The facts alleged above are incorporated by reference.

56. Part 4.1.1 of the 2016 Stormwater Permit and Part 4.1.1 of the 2022 Stormwater Permit state that at least once each calendar year, a routine facility inspection must be conducted during a period when stormwater is discharging off-site or to an on-site storm water retention structure. Part 4.1.2 of the 2016 Stormwater Permit and Part 4.1.2 of the 2022 Stormwater Permit require permittees to document the findings of each routine site inspection and maintain this documentation with the SWPPP.

57. Part 4.3.1 of the 2016 Stormwater Permit and Part 4.3.1 of the 2022 Stormwater Permit state that permittees must conduct annual comprehensive site compliance evaluations at least once each calendar year. Part 4.3.2 of the 2016 Stormwater Permit and Part 4.3.2 of the 2022 Stormwater Permit require permittees to document the findings of each comprehensive site compliance evaluation and maintain this documentation with the SWPPP.

58. The April 2022 site inspection and a subsequent review of site records revealed that Respondent did not conduct and/or document routine facility inspections during a period when stormwater was discharging from the site for the years 2019 and 2020 and Respondent did not conduct and/or maintain records of comprehensive site inspections for 2019, 2020, or 2021.

59. Respondent's failure to conduct and/or document the findings of each inspection or comprehensive site compliance evaluation and to maintain this documentation with the SWPPP is a violation of the 2016 Stormwater Permit and the 2022 Stormwater Permit, and therefore violations of the limitations and conditions of a NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6: Failure to Conduct Preventative Maintenance and Good Housekeeping

60. The facts alleged above are incorporated by reference.

61. Part 2.1.2 of the 2016 Stormwater Permit and Part 2.1.2 of the 2022 Stormwater Permit require permittees to keep clean all exposed areas that are potential sources of pollutants and implement good housekeeping measures to minimize pollutant discharges.

62. Part 2.1 of the 2016 Stormwater Permit and Part 2.1 of the 2022 Stormwater Permit require permittees to implement control measures (including best management practices) to minimize pollutant discharges as set forth in the permittee's SWPPP. Section 4.2 of the SWPPP requires Respondent to implement good housekeeping practices. Respondent's BMPs include the following:

- a. Monitoring the diesel and gasoline aboveground storage tanks (ASTs) to minimize contact between fuel and stormwater, and documenting the response to any spill;
- b. Regularly removing and disposing of debris discovered on the site; and
- c. Promptly cleaning any spilled materials to prevent discharge to stormwater runoff.

63. During the April 2022 inspection, EPA's inspector noted the following good housekeeping violations:

- a. There was staining on the concrete near the diesel AST indicating a release of diesel. Respondent's personnel were unsure of the cause of the staining, and documentation of the spill and corrective measures were not included with the SWPPP.
- b. Bindings and wood debris in the outdoor storage areas were on the ground with the potential to enter the stormwater runoff.

c. Staining on the concrete underneath two company trucks indicated that the trucks had leaked fluids. There was no method for capturing or containing the leaked fluids and there was no spill kit nearby.

64. Respondent's failure to implement good housekeeping practices is a violation of the SWPPP, the 2016 Stormwater Permit, and the 2022 Stormwater Permit, and the General Permit, and as such are violations of the limitations and conditions of a NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Consent Agreement

General Provisions

65. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

66. 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 any portion of this CAFO.

67. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.

68. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$70,441, as set forth in the Penalty section below.

69. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO. In all other respects, Respondent neither admits nor denies the factual allegations asserted above by the EPA.

70. Respondent certifies by the signing of this CAFO that Respondent is in compliance with all requirements of the CWA.

71. The effect of settlement is conditional upon the accuracy of Respondent's representations to the EPA in this CAFO.

Reservation of Rights

72. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

73. Nothing contained in 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.

74. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms 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.

Penalty

75. Respondent agrees to pay a civil penalty of **Seventy Thousand Four Hundred and Forty-One Dollars (\$70,441)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), within thirty (30) days of the Effective Date of this CAFO.

76. The payment of penalties must reference docket number CWA-07-2023-0089 and be remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

77. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Natasha Goss
Attorney Advisor
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov.

78. Should the civil penalty not be paid as provided above, interest 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 the overdue amount from the due date through the date of payment.

79. Respondent understands that its failure to timely pay any portion of the civil penalty described in herein may result in the commencement of a civil action in the United States District Court for the District of Nebraska to recover the full remaining balance, along with penalties and accumulated interest.

80. 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.

Signatories

81. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

82. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns.

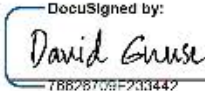
Executed Agreement Filed

83. This executed Complaint and CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

84. Respondent consents to receiving the filed CAFO electronically at the following email address: gbradshaw@astecindustries.com.

For Respondent, Concrete Equipment Company, Inc.:

Signature: 
78826709F203442

Date: 8/30/2023

Name: David Gnuse

Title: General Manager

For the Complainant, U.S. Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail, to:

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Sarah Moreno
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
moreno.sarah@epa.gov

Adam Hendrickson
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
hendrickson.adam@epa.gov

For Respondent:

Michael J. Linder
Koley Jessen
1125 South 103 Street, Suite 800
Omaha, NE 68124
michael.linder@koleyjessen.com

Gary Bradshaw
gbradshaw@astecindustries.com

Date

Signature