

5. Section 402 of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits in the State of Maryland.
7. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
8. “Storm water” (or “stormwater”) is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
9. An NPDES permit is required for discharges of storm water associated with industrial activity. Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), (c); 40 C.F.R. § 122.21.
10. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), facilities classified as, inter alia, Standard Industrial Classification Group 32, including Industry Group 327 (Concrete Products), are engaged in “industrial activity” within the meaning of Section 402(p) of the Act and 40 C.F.R. § 122.
11. The term “stormwater associated with industrial activity” means, in pertinent part, “the discharge from any conveyance that is used for collection and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14)(i)-(ix) and (xi).
12. Dischargers of storm water associated with industrial activities to waters of the United States are required to seek NPDES permit coverage. 40 C.F.R. § 122.26(c).
13. Pursuant to the authority of the Act and the NPDES program approval, the State of Maryland issued a General Discharge Permit No. 15MM and a National Pollutant Discharge Elimination System Permit (“NPDES Permit No. MDG49 (“the Permit”)) establishing discharge requirements for stormwater associated with industrial activities. The effective date of the Permit was May 1, 2017 with an expiration date of April 30, 2022.

14. Respondent, Concrete Pipe and Precast, LLC., is a limited liability company established under the laws of the State of Delaware and is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
15. The Permit authorizes discharges of storm water associated with industrial activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), when in accordance with the conditions and terms of the Permit.
16. At all times relevant herein, upon information and belief, Respondent was the owner and/or operator of a site known as Union Bridge Plant located at 7955 Dorsey Run Road, Jessup, Maryland (the “Facility”) where Respondent manufactures concrete pipes and structures.
17. On February 11, 2018, Respondent submitted a Notice of Intent (“NOI”) to be covered under the Permit of MDE.
18. At the Facility, the Respondent has been at all relevant times engaged in industrial activity that discharges storm water from a point source to Dorsey Run Creek, which flows into Little Patuxent River.
19. Little Patuxent River and Dorsey Run Creek are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
20. The industrial activity performed by Respondent at the Facility discharges stormwater that is directly related to manufacturing, processing, or raw materials storage areas at Respondent’s industrial plant within the meaning of 40 C.F.R. § 122.26(b)(14).
21. On June 11, 2019, representatives of EPA Region III (“the Inspection Team” or “the inspectors”) conducted an inspection at the Facility (hereinafter, “the Inspection”) to assess compliance with the Permit.
22. The Inspection Team prepared an inspection report from the Inspection dated August 1, 2019 (“the Inspection Report”), which included multiple observations regarding Respondent’s compliance with the requirements of the Permit. EPA sent a copy of the Inspection Report to the Respondent on August 1, 2019.
23. On July 16, 2019, Respondent sent to EPA a response to the Inspection Report which included narratives that described the corrective actions taken by Respondent since the time of the Inspection.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count I

Failure to Implement Best Management Practice Requirements

24. The allegations of Paragraphs 1 through 23 of this AOC are incorporated herein by reference.
25. Part III.B.1.b.iii. of the Permit requires the Permittee to "regularly inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants in storm water discharged to receiving waters."
26. Part III.B.1.b.iv. requires the Permittee to "minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur ... "
27. Part III.B.1.b.xi of the Permit requires the Permittee to "ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by intercepting them before they are discharged ... "
28. At the time of the Inspection on June 11, 2019, inspectors observed numerous locations of ground discoloration from oil stains throughout the Facility, as well as leaking heavy machinery without drip pans or other containment. In addition, numerous containers were not labeled as required by the Permit. Moreover, stormwater inlets at the Facility were not being properly maintained and protected against releases of pollutants in stormwater discharging to Dorsey Run Creek.
29. At the time of the Inspection on June 11, 2019, the Permittee had recently constructed a berm along the southern boundary of the Facility to direct stormwater to the appropriate outfalls. The berm is mostly constructed out of concrete debris, gravel, soil and sand. However, certain areas of the berm were exposed and contained debris and trash, which has the potential to co-mingle with stormwater and discharge offsite to Dorsey Run Creek. Additionally, the Inspection Team observed a concrete waste pile outside the containment area wall along the southern boundary of the Facility.
30. On June 11, 2019, based upon the information described in Paragraphs 28 and 29, above, Respondent failed to implement BMPs in accordance with the Permit as provided in Paragraphs 25-27.

31. Respondent's failure to implement BMPs in accordance with the Permit constitutes a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count II
Unauthorized Discharges Under the Permit

32. The allegations of Paragraphs 1 through 31 of this AOC are incorporated herein by reference.
33. Part III.B.1.b.x. of the Permit requires the Respondent to "eliminate non-stormwater discharges not authorized by a NPDES or State discharge permit ... "
34. During the Inspection on June 11, 2019, the inspectors observed that the Respondent conducts wastewater-generating activities, including hydrotesting in the north-central portion of the Facility and column segregation testing in the northwest portion of the Facility. These activities were conducted outdoors without overhead coverage and the wastewater generated from these processes is largely uncontained and discharges offsite through Outfall 003. The wastewater generated from these processes is not an authorized discharge under the Permit.
35. The industrial stormwater generated from the processes described in Paragraph 34, above, is not an authorized discharge under the Permit.
36. On at least June 11, 2019, based upon the information described in Paragraphs 34 and 35, Respondent engaged in unauthorized discharges at the Facility in violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count III
Failure to Maintain a Facility Map

37. The allegations of Paragraphs 1 through 36 of this AOC are incorporated herein by reference.
38. Part III.C.2.c of the Permit requires that the Permittee develop a Facility map that must include the following:
- i. the size of the property in acres;
 - ii. the location and extent of significant structures and impervious surfaces;

- iii. directions of stormwater flow (use arrows);
locations of all existing structural control measures or (best management practices] BMPs;
- iv. locations of all receiving waters in the immediate vicinity of your facility;
- v. locations of all stormwater conveyances including ditches, pipes, and swales;
- vi. locations of potential pollutant sources identified under Part III.C.3;
- vii. locations where significant spills or leaks identified under Part III.C.3 have occurred;
- viii. locations of all stormwater monitoring points;
- ix. locations of stormwater inlets and outfalls, with a unique identification code for each outfall (e.g., Outfall No. 1, No. 2, etc.), indicating if you are treating one or more outfalls as substantially identical, and an approximate outline of the areas draining to each outfall;
- x. municipal separate storm sewer systems, where your stormwater discharges to them;
- xi. locations and descriptions of all non-stormwater discharges identified under Part I.E.3;
- xii. locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage, or disposal of wastes; liquid storage tanks; processing and storage areas; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; transfer areas for substances in bulk; machinery; and manufacturing buildings; and
- xiii. locations and sources of run-on to your site from adjacent property that contains significant quantities of pollutants."

39. A review of the Permittee's Facility map obtained during the Inspection on June 11, 2019, indicated that the Facility map was deficient with the requirements of the Permit as follows:

- *Locations of all existing structural control measures or BMPs.*
- *Locations of all receiving waters applicable to the Facility.*
- *Locations of all stormwater monitoring points.*
- *Locations of stormwater inlets and outfalls, with a unique identification code for each outfall.*

- *Locations of the following activities where such activities are exposed to precipitation: Locations used for the treatment, storage, or disposal of wastes.*
40. On at least June 11, 2019, based upon the information described in Paragraph 39, above, Respondent failed to maintain a complete Facility map in violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

IV. **ORDER**

AND NOW, Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

Monthly Facility Inspection - Stormwater

42. The Respondent shall conduct Monthly Facility Inspections related to all aspects of stormwater management at the facility. The Monthly Facility Inspections shall be conducted in accordance with the following:
43. At least every 30 days, Respondent shall conduct a Facility inspection that will review the effectiveness of Respondent's Stormwater Pollution Prevention Plan ("SWPPP"). Respondent shall conduct Monthly Facility Inspections for a period of twenty-four (24 months) beginning 30 days after the effective date of this AOC. Respondent shall document the Monthly Facility Inspections using the inspection form attached to this AOC (Attachment - A). One or more members of the Facility's stormwater pollution prevention personnel shall conduct and document the Monthly Facility Inspections. The Monthly Facility Inspection form must either:
- i. include a certification that the Respondent is in compliance with the Permit and the SWPPP; or
 - ii. record the storm water management deficiencies and the necessary follow up corrective actions that Respondent will take to return to compliance with the Permit and the SWPPP. Respondent shall track and document such corrective actions taken including appropriate modifications to the SWPPP, if necessary, in subsequent Monthly Facility Inspection forms.
44. Respondent shall maintain copies of completed stormwater Monthly Facility Inspection forms on-site for at least five years from the date of the Monthly Facility Inspection Start Date and present such documentation upon request by representatives of the MDE and/or EPA.

NPDES Compliance Audit

45. Respondent shall conduct an annual stormwater NPDES Compliance Audit (the “NPDES Audit”) at the Facility for calendar years 2021-2023, as described below.
- i. The first audit will evaluate compliance during the calendar year 2021 and must be completed not later than April 30, 2022.
 - ii. Respondent will complete audits for the calendar years of 2022 and 2023 no later than January 31st of the following year, respectively.
 - iii. The person(s) conducting the NPDES Audit shall be adequately trained in stormwater compliance, shall have the authority to require implementation of the applicable CWA requirements for stormwater discharges and shall have the authority to take corrective actions regarding stormwater compliance at the Facility.
 - iv. The audit must review compliance with all the NPDES permit requirements listed in Attachment B.
 - v. The findings of the audit must be documented in a report as shown in Attachment B.
 - vi. Respondent shall submit a copy of the NPDES Audit to EPA within thirty (30) days after the completion date set forth in Paragraphs 45i-ii, above, including a certification that the monthly facility inspections were performed for the previous calendar year in accordance with Paragraphs 46-48, below.
46. For purposes of this AOC, any submissions and inspection reports made to MDE and/or EPA pursuant to Paragraphs 42 through 45 herein shall require certification by a responsible corporate officer as provided in Paragraph 47 below.
47. Any notice, submission, certification, data presentation, or other document submitted by Respondent to EPA pursuant to this AOC which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent’s compliance or non-compliance with any requirements of this AOC shall be certified by a responsible corporate officer of the Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the

signature of the responsible corporate officer signing the certification on behalf of
Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

48. Any notice, submission, certification, data presentation, or other document submitted by Respondent to EPA and MDE pursuant to this AOC shall be sent via-email transmission to the attention of:

Chuck Schadel (3ED32)
NPDES Section, Water Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Schadel.Chuck@epa.gov

and

Sharon Talley
Chief
Enforcement Division, Compliance Program
Water and Science Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
Talley.Sharon@mde.gov

and

Louis F. Ramalho (3RC40)
Sr. Asst. Regional Counsel
U.S. Environmental Protection Agency, Region III
Ramalho.Louis@epa.gov

V. GENERAL PROVISIONS

49. Issuance of this AOC is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251-1388, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).
50. This AOC does not constitute a waiver or modification of the terms or conditions of the Respondent's Permit. Compliance with the terms and conditions of this Consent Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation, or permit.
51. By signing this AOC, Respondent neither admits nor denies the specific factual allegations set forth in this AOC.
52. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
53. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
54. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
55. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOC and to execute and legally bind the party.

56. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
57. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
58. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.
59. This AOC shall terminate upon EPA's determination that Respondent has completed the requirements set forth in Paragraphs 42 through 45, above. After Respondent has completed the requirements set forth in Paragraphs 42 through 45, Respondent shall send to EPA a written request for termination. If EPA agrees that Respondent has complied with the AOC, EPA shall provide Respondent with written notification of termination. EPA reserves the right to unilaterally terminate this AOC in its unreviewable discretion.

VI. EFFECTIVE DATE

This AOC is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: _____


Karen Melvin
Director, Enforcement
& Compliance Assurance Division
U.S. EPA Region III

In Re: Administrative Order on Consent
Concrete Pipe and Precast, LLC.
Docket No. CWA-03-2021-0078DN

AGREED TO:

Concrete Pipe and Precast, LLC.

Date: 03-24-21



Anthony Gentile
Plant Manager