

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)

HOLCIM (US), INC.)
Clarksville Plant,)

Respondent)

Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

) Docket No. CWA-07-2011-0026

) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is Holcim (US), Inc. (“Holcim”), a corporation registered under the laws of the State of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

3. 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.

4. 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.

5. 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 storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(ii) defines “storm water discharge associated with industrial activity,” in part, as including facilities classified as Standard Industrial Classification major group 32 (Stone, Clay, Glass, and Concrete Products).

9. 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, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Background

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

11. At all times relevant to this action, Respondent was the owner and/or operator of the Holcim (US), Inc. Clarksville facility, located at 14738 Highway 79 North in Clarksville, Missouri (“the facility” or “the Site”). This business conducts activities with SIC codes 3241 (cement, hydraulic), 1422 (crushed and broken limestone), and 4952 (sewerage systems).

12. Storm water, snow melt, surface drainage, and runoff water leave Respondent’s facility and flow into unnamed tributaries of the Mississippi River, into an unnamed tributary of Calumet Creek, and into an unclassified slough of the Mississippi River. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

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

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

15. Respondent discharged pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

16. Storm water runoff from Respondent’s construction site 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).

17. 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.

18. Respondent applied for and was issued NPDES permit coverage under a site-specific permit. MDNR assigned Respondent permit number MO-0000159, which became effective on July 16, 2010, and will expire on July 15, 2015.

19. On September 13 and 14, 2010, an EPA inspector 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 storm water at the site in accordance with the CWA.

Findings of Violation

Failure to Mark Each Outfall

20. The facts stated in Paragraphs 10 through 19, above, are herein incorporated.

21. Condition 2 of the Special Conditions section of Respondent’s permit requires that all outfalls must be clearly marked in the field.

22. The EPA inspection referenced in Paragraph 19, above, revealed that Outfall OU-008 was not marked.

23. Respondent’s failure to mark each outfall is a violation of Respondent’s Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Failure to Comply with Narrative Water Quality Standards

24. The facts stated in Paragraphs 10 through 19, above, are herein incorporated.

25. Condition 6 of the Special Conditions section of Respondent's permit states that discharges shall not cause a violation of the Water Quality Standards (10 C.S.R. 20-7.031(3)), which state, in part, that no water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting, *inter alia*, the following condition: waters shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses.

26. The EPA inspection referenced in Paragraph 19, above, revealed the presence of foam on the water at Outfall OU-002 in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses.

27. Respondent's failure to comply with narrative water quality standards is a violation of Respondent's Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Failure to Develop an Adequate Storm Water Pollution Prevention Plan

28. The facts stated in Paragraphs 10 through 19, above, are herein incorporated.

29. Condition 8 of the Special Conditions section of Respondent's permit requires Respondent to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") for the permitted site.

30. The EPA inspection referenced in Paragraph 19, above, revealed that Respondent had not developed and implemented a SWPPP for the entire permitted site. Specifically, Respondent's SWPPP only addressed one project on a small area of the permitted site.

31. Respondent's failure to develop an adequate SWPPP is a violation of Respondent's Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Failure to Maintain BMPs

32. The facts stated in Paragraphs 10 through 19, above, are herein incorporated.

33. Condition 8 of the Special Conditions section of Respondent's permit requires Respondent to adhere to specific minimum Best Management Practices ("BMPs"). Condition

8(d) requires Respondent to provide good housekeeping practices on the site to keep solid waste from entry into waters of the state.

34. The EPA inspection referenced in Paragraph 19, above, revealed that Respondent failed to adhere to the BMPs required by the permit. Specifically, the concrete barrier meant to control erosion at the edge of the barge shipping area was deficient, and was therefore ineffective at preventing solid waste, including coke stored in piles at the barge shipping area, from entering directly into the Mississippi River.

35. Respondent's failure to adhere to the minimum BMPs prescribed by the permit is a violation of Respondent's Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance

Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 36 through 38.

36. Within thirty (30) days of the effective date of this Order, Respondent shall take all corrective actions necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of Respondent's permit.

37. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA and MDNR a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are sufficient to prevent recurrence of these or similar violations.

38. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit to EPA a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

39. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Ms. Cynthia Sans
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101-2907.

40. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi
Chief, Compliance and Enforcement Section
Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and to:

Ms. Irene Crawford
Director, Northeast Regional Office
Missouri Department of Natural Resources
1709 Prospect Drive
Macon, Missouri 63552-2602.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

41. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an administrative or judicial enforcement action to recover penalties for any violations of the CWA or to seek additional injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

42. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309 of the CWA, 33 U.S.C. § 1319,

for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

43. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

44. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

45. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

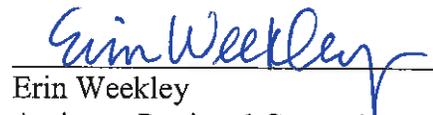
Termination

46. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 25 day of February, 2011.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division



Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Corporation Company
120 South Central Avenue
Clayton, Missouri 63105

and

Dennis Fox
Site Superintendent
Holcim (US), Inc., Clarksville Plant
14738 Highway 79 North
Clarksville, Missouri 63336-2044,

and via first class mail to:

Kevin Mohammadi
Chief, Compliance and Enforcement Section
Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Irene Crawford
Director, Northeast Regional Office
Missouri Department of Natural Resources
1709 Prospect Drive
Macon, Missouri 63552-2602.

2/28/11
Date

Kimb Presler