



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

MAY 18 2011

Ref: 8ENF-W-NP

CERTIFIED MAIL 70093410000025930881
RETURN RECEIPT REQUESTED

Michael Langston
Registered Agent
Langston Concrete, Inc.
12998 County Road 225
Westcliffe, CO 81252

Re: Order for Compliance
under the Clean Water Act

Dear Mr. Langston:

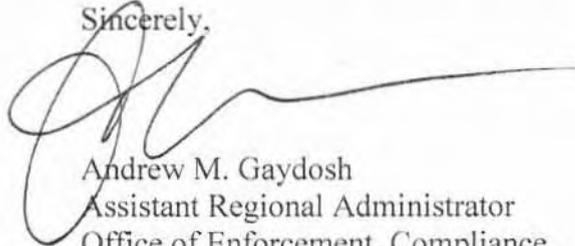
Enclosed is an Order for Compliance (Order) issued by the United States Environmental Protection Agency Region 8 (EPA) to Langston Concrete, Inc. (Langston). The authority for issuing this Order is based on §§ 308 and 309(a)(3) of the Clean Water Act (the Act), 33 U.S.C. §§ 1318 and 1319(a)(3). As set forth in the Order, EPA has found that Langston has violated requirements of Construction General Permit No. COR-030000 issued by the Colorado Department of Public Health and Environment.

The Act requires EPA to take all appropriate enforcement action necessary to secure prompt compliance with the Act and conditions of permits issued under the Act. Section 309 of the Act, 33 U.S.C. § 1319, authorizes a variety of possible enforcement actions for noncompliance, including civil or criminal actions, administrative penalty actions, and, in some cases following a criminal conviction, debarment from Federal contracts and/or loans. By issuing this Order, EPA is not precluded from assessing administrative penalties or filing a civil or criminal action in U.S. District Court for the violations cited in the Order. Additionally, EPA may take an enforcement action if this Order is violated.

Also enclosed with this letter is a copy of the report from the EPA Storm Water Compliance Evaluation Inspection at the Arkansas River Trail Phase 2 construction site on March 11, 2011. Please note that the inspectors discussed their observations and/or concerns with Michael Brown during the inspection. Please refer to the timetable outlined in the Order for the timeline to respond to this inspection report.

Please review the Order carefully. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the Act, the most knowledgeable person on my staff for technical matters is Natasha Davis, Technical Enforcement, at (303) 312-6225. If you are represented by an attorney who has any questions, please ask the attorney to call Peggy Livingston, Enforcement Attorney, at (303) 312-6858.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew M. Gaydosh', with a long horizontal flourish extending to the right.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
Nathan Moore, CDPHE
Langston Concrete, Inc.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 MAY 18 AM 8:

FILED
EPA REGION VII
HEARING CLERK

In the Matter of:)
)
Langston Concrete, Inc.) ADMINISTRATIVE ORDER
) FOR COMPLIANCE
)
) Docket No. CWA-08-2011-0012
Respondent.)

INTRODUCTION

This Administrative Order for Compliance (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by sections 308 and 309(a) of the Clean Water Act (the Act), 33 U.S.C. §§ 1318 and 1319(a). This authority has been properly delegated to the undersigned official.

FINDINGS OF FACT AND LAW

The following findings apply to all times relevant to this action and to each count of this complaint:

1. Respondent Langston Concrete, Inc. (Langston or Respondent) is a corporation, incorporated in the State of Colorado.
2. Respondent is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
3. Respondent owns and/or is engaged in constructing a river trail along the Arkansas River between 4th Street and Clark Street in Pueblo, Colorado (the Site).
4. The Site encompasses approximately 12.8 acres.
5. Construction activities began at the Site in February 2010.
6. Respondent has had day-to-day responsibility for construction at the Site.
7. The runoff and drainage from the Site is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).

8. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
9. Storm water, snow melt, surface drainage and runoff water have been leaving the Site and have flowed into the Arkansas River.
10. The Arkansas River is a “navigable water” as defined by section 502(7) of the Act, 33 U.S.C. § 1562(7), and a “water of the United States” as defined by 40 C.F.R. § 122.2.
11. Each storm water discharge from the Site is the “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
12. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
13. In order to restore and maintain the integrity of the nation’s waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
14. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA (and states with authorization from EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
15. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a program under which NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
16. Any discharge from construction activity that disturbs at least five acres constitutes a storm water discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).
17. The Colorado Department of Public Health and Environment (CDPHE) was approved by EPA to administer the NPDES program on March 27, 1975. 40 Fed. Reg. 16713, April 14, 1975. A permit issued by CDPHE under Colorado’s EPA-approved NPDES program is known as an CDPS permit.
18. Effective July 1, 2007, the CDPHE issued an NPDES general permit (CDPS Permit No. COR-030000, referenced as the Permit) authorizing discharges of storm water associated with construction activities, if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the Permit by submitting a notice of intent for coverage to the CDPHE.
19. On February 7, 2011, Respondent submitted a notice of intent to CDPHE indicating

Respondent's intent to have construction at the Site covered by the Permit. Effective February 8, 2011, Respondent was authorized to discharge storm water at the Site in accordance with the requirements of the Permit.

20. On March 11, 2011, EPA inspectors conducted a storm water inspection at the Site to determine compliance with the Permit.
21. The Permit requires that Respondent develop and implement an adequate storm water management plan (SWMP). The SWMP must, among other things, identify pollution sources and describe all best management practices (BMPs) to be used to reduce pollutants in storm water discharges; include a clear description of the Site; describe any anticipated allowable sources of non-stormwater discharge at the Site, such as uncontaminated springs; include a Site map that designates the locations of structural and nonstructural BMPs, the areas of ground surface disturbance, the areas where buildings materials, equipment, and waste are stored; and describe how all disturbed areas of the Site are to be finally stabilized after construction. Parts I.B and I.C of the Permit.
22. During the inspection, the EPA inspectors observed that Respondent's SWMP did not describe all BMPs. It did not, for example, indicate the location of structural BMPs such as rock socks and straw wattles. The inspectors also observed that the map of the Site in Respondent's SWMP did not define which areas were disturbed, did not indicate where equipment, chemicals and fuel were or would be stored, and did not describe a natural spring at the Site that was discharging at the time of the inspection.
23. The Permit requires Respondent to select, install, implement, and maintain BMPs. Part I.D of the Permit. BMPs include but are not necessarily limited to structural controls (such as straw wattles and silt fences) and management practices (such as a dedicated concrete washout area and street sweeping). Part I.C.3.c of the Permit.
24. The Permit requires Respondent to address failed BMPs as soon as possible to minimize discharge of pollutants. Part I.D.8 of the Permit.
25. At the time of the inspection, EPA inspectors observed excessive sediment in culverts at the Site and missing, failed, and/or inadequate BMPs. For example, the inspectors observed an unprotected, devegetated strip. They also observed that the following BMPs were not being maintained and/or had not been properly installed: a silt fence bordering the trail, silt fence at the base of the culvert near the Main Street Bridge, filter fabric around culverts, and a straw wattle near a natural spring discharge. At least one silt fence had fallen into the Arkansas River.
26. The Permit requires Respondent to conduct regular specified storm water inspections of the Site. At a minimum, Respondent must conduct inspections at least once every 14 calendar days and within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion. The Permit also requires Respondent to keep records of inspections for at least three years. Part I.D.6 of the Permit.

27. During the inspection, the EPA inspectors asked a representative of Respondent for copies of inspection reports, but none were available. The inspectors also learned that Respondent had not been inspecting the Site every 14 days and within 24 hours of any precipitation event or snowmelt event that causes surface erosion.

FINDINGS OF VIOLATION

28. Respondent has failed to develop and implement a complete SWMP as required by the Permit.
29. Respondent has failed to install, implement, and maintain BMPs as required by the Permit.
30. Respondent has failed to conduct inspections as required by the Permit.

ORDER

1. Within 10 days of receipt of this Order, Respondent is to submit written notice of intent to EPA and CDPHE of Respondent's intent comply with the requirements of this Order.
2. Effective immediately, Respondent shall comply with all provisions of the Permit. Compliance shall include but not be limited to all requirements relating to developing a SWMP, implementing all BMPs, and inspecting the Site. In addition, Respondent shall
 - i. Review Part 1.D.6. of the SW General Permit and within 30 day of receipt of this Order, submit copies to EPA and CDPHE of all site inspection reports for inspections conducted from the time inspection began to the present, and state how Respondent will fulfill the requirement to inspect, as required by the permit;
 - ii. Submit copies of self-inspection reports (required by Part I.D.6.b.2 of the SW General Permit) quarterly to EPA and CDPHE, with each quarterly report to be due 10 days after the end of each calendar quarter (e.g., July 10, 2011, for the second calendar quarter of 2011; October 10, 2011, for the third calendar quarter of 2011, etc.) for the life of the construction project at the Site, or until written notice is given by EPA that the submissions may cease;
 - iii. Within 30 days of receipt of this Order, provide EPA and CDPHE a narrative description as well as photos corrections made to the silt fencing used within the project and found in the river, the culvert east of Main Street, the five-foot wide strip 3/4 of the way between Main Street and Clark Street, and the culvert under the railroad bridge;

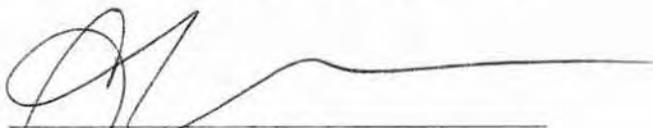
- iv. Within 45 days of receipt of this Order, submit written documentation to EPA and CDPHE, including photographs, that BMPs have been developed and implemented at the Site as required by the Permit (or individual permit) and detailed in the SWMP, including, but not limited to, erosion control and good housekeeping practices;
 - v. Within 30 days of receipt of this Order, provide EPA and CDPHE with revised site maps that identify the dates BMPs were installed or modified at the culverts, the location of the spring, the locations of silt fencing used along the trail rather than along the river, storage areas, disturbed and undisturbed areas, and silt fencing used around the concrete washout;
 - vi. No later than 30 days after receiving this Order, submit to EPA and CDPHE a time line of all phases of development at the Site, including the start and end date of each phase of construction, and the acreage disturbed during each phase;
 - vii. Within 30 days of receipt of this Order, provide EPA and CDPHE with a revised SWMP that describes and locates the spring as well as the filter fabric and straw wattle.
3. Upon final stabilization of the Site, Respondent shall submit an Inactivation Notice as required by the Permit.
 4. Respondent shall send all written notices and reports required by this Order to the following:

<p>To EPA: Natasha Davis (8ENF-W-NP) U.S. EPA Region 8 Office of Enforcement, Compliance and Environmental Justice Technical Enforcement Program 1595 Wynkoop Street Denver, CO 80202-1129</p>	<p>To CDPHE: Nathan Moore Colorado Department of Public Health and Environment Water Quality Control Division 4300 Cherry Creek Drive South Denver, CO 80246-1530</p>
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 5. If Respondent asserts a business confidentiality claim for information required to be submitted under this Order, Respondent shall provide such information only to EPA and adhere to the procedures in 40 C.F.R. part 2, subpart B. EPA will determine if the information Respondent has designated meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both EPA and the CDPHE as specified in this Order, and EPA may make the information available to the public without further notice to Respondent.

7. This Order does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect. Nor does this Order waive any other legal responsibility or liability of Respondent.
8. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(c), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or the Permit. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
9. Nothing in this Order shall be construed to prevent EPA from instituting further action under § 309 of the Act for the violations cited in this Order or to relieve Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date:
MAY 17 2011

By: 

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

CERTIFICATE OF SERVICE

I certify that the foregoing administrative order was sent or delivered on this day as follows:

Original and one copy hand delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection
Agency (8RC)
Region 8
1595 Wynkoop Street
Denver, CO 80202

Copy by certified mail, return receipt requested (no. 7009-3410-0000-2593-0881)
to:

Michael Langston
Langston Concrete, Inc.
2335 N Interstate 25
Pueblo, CO 81008

Copy by certified mail, return receipt requested (no. 7009-3410-0000-2593-0874)
to:

Michael Langston
Registered Agent
Langston Concrete, Inc.
12998 County Road 225
Westcliffe, CO 81252

5/18/2011
Date

By: Judith Mc Ternan
Judith McTernan