

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
Coots Materials Co., Inc. )  
d.b.a. Jabens Quarry )  
1615 58<sup>th</sup> Street )  
Garrison, IA 52229 )  
)  
Respondent )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
\_\_\_\_\_ )

Docket No. CWA-07-2007-0009

FINDINGS OF VIOLATION,  
ORDER FOR COMPLIANCE

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

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**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 VII and further delegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

2. Respondent is Coots Materials Co., Inc. (hereinafter, "Coots" or "Respondent"), a corporation registered under the laws of Iowa and authorized to conduct business in the State of Iowa.

**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, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (hereinafter "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, requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, 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) defines “storm water discharge associated with industrial activity”, in part, as facilities under Standard Industrial Classifications (“SIC”) 1422 (rock crushing plant).

9. The Iowa Department of Natural Resources (hereinafter “IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The IDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. 3 on October 1, 2002. The permit governs storm water discharges associated with industrial activity from asphalt plants, concrete batch plants, rock crushing plants, and construction sand and gravel facilities.

### **Factual Background**

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a quarry and limestone crushing operation, known as Jabens Quarry, located at 1615 58<sup>th</sup> Street, Garrison, Iowa (the Site) and assigned a SIC code 1422.

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and goes directly and/or into Pratt Creek. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

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

15. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The Site was a “point source” which caused the “discharge of pollutants” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

17. Respondent discharged pollutants directly and/or into Pratt Creek.

18. The Respondent discharged pollutants from the Site into “navigable waters” as defined by CWA Section 502(7), 33 U.S.C § 1362(7).

19. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), requires a permit issued pursuant to Section 402 of the CWA.

20. On or about September 3, 2002, Respondent submitted a NOI for coverage under the IDNR General Permit No. 3.

21. Permit #IA-1749-1477 was issued to Respondent and will expire on October 1, 2007.

22. On August 24, 2006, 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 the treatment and disposal of storm water at the site in accordance with the CWA.

### **Findings of Violation**

#### **Failure to Develop and Implement a Storm Water Pollution Prevention Plan (SWPPP)**

23. The facts stated in paragraphs 11 through 22 are herein incorporated.

24. Part III(C), Storm Water Pollution Prevention Plans, of the IDNR, NPDES General Permit No. 3, states “a storm water pollution prevention plan shall be developed for each facility covered by this permit.”

25. Part III(C)(1)(A) of the IDNR, NPDES General Permit No. 3, states “the pollution prevention plan shall be completed before the Notice of Intent is submitted to the Department.”

26. Part III(C)(4)(B) of the IDNR, NPDES General Permit No. 3, states “each facility covered by this permit shall develop a description of storm water management controls appropriate to the facility, and, implement such controls.”

27. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to prepare and implement a Storm Water Pollution Prevention Plan in accordance with Part III of the IDNR, NPDES General Permit No. 3.

28. Respondent’s failure to develop and implement a SWPPP is a violation of Respondent’s General Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

#### **Failure to Perform and Document Site Inspections**

29. The facts stated in paragraphs 11 through 22 are herein incorporated.

30. Part III(C)(4)(C), Visual Inspection, of the IDNR, NPDES General Permit No. 3, states in part, “qualified personnel shall inspect designated equipment and plant area at appropriate intervals specified in the plan, but, in no case less than once a year.”

31. Part III(C)(4)(C)(3) of the IDNR, NPDES General Permit No. 3, states in part, “a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and action taken ... shall be made and retained as part of the SWPPP for at least three years.”

32. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to inspect designated equipment and plant areas at appropriate intervals specified in the plan, but in no case less than once a year, and generate a report summarizing the inspection in accordance with Part III(C)(4) of the IDNR, NPDES General Permit No. 3.

33. Respondent’s failure to perform and document visual inspections are a violation of Respondent’s General Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a) and §1342(p).

#### **Failure to Monitor and Report**

34. The facts stated in paragraphs 11 through 22 are herein incorporated.

35. Part V(B)(1), Monitoring Requirements, of the IDNR, NPDES General Permit No. 3, requires facilities with storm water discharge associated with industrial activity from asphalt plants and rock crushing plants to monitor based on the listed A. Parameters; B. Frequency of Monitoring; and C. Sample Type.

36. Part V(D)(2), Reporting, of the INDR, NPDES General Permit No. 3, states in part "permittees must retain monitoring results in accordance with Part V(E)".

37. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to conduct sampling and retain records in accordance with Part V(B)(1) and (D)(2) and (E)(1) of the IDNR, NPDES General Permit No. 3.

38. Respondent's failure to monitor and retain reports are violations of Respondent's General Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and §1342(p).

#### **Order For Compliance**

39 Based on the Factual Background 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 40 through 42.

40. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is 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 the permit.

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

42. 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 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**

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

Nick Peak  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency - Region VII  
901 North Fifth Street  
Kansas City, KS 66101.

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

Joe Griffin  
Iowa Department of Natural Resource  
Wallace Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034.

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

45. 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.

46. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309(b),(c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), 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 Act for any violation whatsoever.

#### **Access and Requests for Information**

47. 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

48. 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.

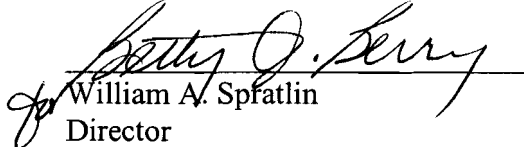
#### Effective Date

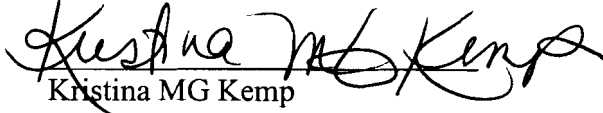
49. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region VII.

#### Termination

50. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 14~~th~~ day of March, 2007

  
for William A. Spfatlin  
Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

  
Kristina MG Kemp  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

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 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:

David Coots, President  
Coots Materials Co., Inc.  
1700 W. D Street  
Vinton, IA 52349;

Tyneal Herger  
Registered Agent for Coots Materials Co., Inc.  
1700 W. D Street  
Vinton, IA 52349;

Joe Griffin  
Iowa Department of Natural Resource  
Wallace Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034; and

Ed Tormey  
Iowa Department of Natural Resource  
Wallace Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034.

3/15/07

Date

  
Sender