

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
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)
)
Bruening Rock Products, Inc.)
d.b.a. Hennessey Quarry) Docket No. CWA-07-2007-00)
4301 Old River Road SW)
Cedar Rapids, IA 52404) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

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 Bruening Rock Products, 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 Hennessey Quarry, located at 4301 Old River Road SW, Cedar Rapids, 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 an unnamed tributary of the Cedar River and the Cedar River. 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 an unnamed tributary of the Cedar River and the Cedar River.

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 June 14, 2003, Respondent submitted a NOI for coverage under the IDNR General Permit No. 3.

21. Permit #IA-4110-3940 was issued to Respondent and will expire on September 30, 2008.

22. On August 23, 2006, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 318(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 an Adequate 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)(3), Pollution Prevention Plan Amendments, of the IDNR, NPDES General Permit No. 3, states in part “the permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance”.

26. Part III(C)(4), of the IDNR, NPDES General Permit No. 3, states in part, that the plan shall include, at a minimum, the following items:

- A. Description of Potential Pollutant Sources. (1) A site map showing an outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and each surface water body;
- B. Storm Water Management Controls. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls: (7) Sediment and Erosion Prevention; (10) Non-storm Discharges.

27. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to: identify drainage areas and outfalls; locations of spills, potential pollutants, and waste disposal; list all structural and non-structural controls; identify soil erosion problems; certify the discharge was tested or evaluated for non-storm water discharges; and amend the plan in accordance with Part III of the IDNR, NPDES General Permit No. 3.

28. Respondent’s failure to develop an adequate 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 23 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).

Failure to Obtain a Permit

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

40. Part I(B)(2), Limitations on Coverage, of the IDNR, NPDES General Permit No. 3, States in part, "the following types of "storm water discharge associated with industrial activity from asphalt plants, concrete batch plants, rock crushing plants, and construction sand and gravel facilities" are NOT authorized by this permit: (D) dewatering operations at quarrying facilities, mining facilities, sand pits, and gravel pits.

41. The EPA inspection referenced in paragraph 23 above revealed Respondent was pumping water from a holding basin/lagoon on the north side of the site with a hose to dewater

the quarry prior to obtaining the appropriate permit authorization.

42. Respondent's failure to obtain a General Permit No. 5 (Mining and Processing Facilities) permit authorization before commencing dewatering operation is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Order For Compliance

43. 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 44 through 46.

44. 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.

45. 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.

46. 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

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

Raju Kakarlapudi
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII

901 North Fifth Street
Kansas City, KS 66101.

48. 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 9th Street
Des Moines, IA 50319-0034.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

49. 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.

50. 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

51. 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

52. 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.

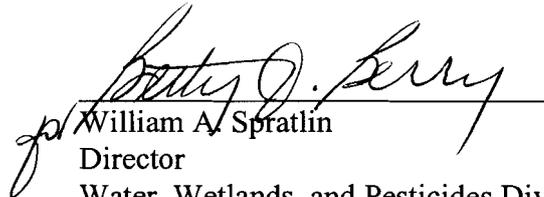
Effective Date

53. 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

54. 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 14th day of March, 2007.



William A. Spratlin
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:

Duane Bruening
Registered Agent for Bruening Rock Products, Inc.
325 Washington
P.O. Box 127
Decorah, IA 52101;

Stephen Courtney
Hennessey Quarry
P.O. Box 127
Decorah, IA 52101;

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

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

3/15/07
Date


Sender