

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 7
 11201 RENNER BOULEVARD
 LENEXA, KANSAS 66219

Received by
 EPA Region 7
 Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. CWA-07-2022-0047
)	
Shilling Construction Company, Inc.)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
Respondent.)	ON CONSENT
)	
Proceedings under Section 309(a)(3))	
of the Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order”) are made and issued pursuant to 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 U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division.

2. Respondent is Shilling Construction Company, Inc., a corporation under the laws of the state of Kansas, and the owner and/or operator of an asphalt manufacturing facility located at 321 McDowell Creek Road, Manhattan, Kansas (“Facility”).

3. The EPA, together with Respondent, enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 et seq., to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address noncompliance by the Respondent with its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably reached an agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings

of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also 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 Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. 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 only be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section.

7. 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 stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classification 2951. 40 C.F.R. § 122.26(b)(14)(ii).

11. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. Respondent’s most recent five-year NPDES permit has an effective date of November 1, 2016, and an expiration date of October 31, 2021, with previous 5-year permit having been issued in 2011. Effective November 1, 2021, KDHE has issued new NPDES general permit, to replace the 2016 permit, which expires October 31, 2026.

13. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to the KDHE in accordance with the requirements of Part 1.5. of the permit. Respondent submitted an NOI to KDHE on January 10, 2012, to obtain authorization

under the General Permit. KDHE does not require a new NOIs for coverage under subsequent general permits.

14. As required by Part 2.1 of the General Permit, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in the Permit, must be completed, implemented, and maintained on site.

EPA’s General Allegations

15. Respondent is, and was at all times relevant to this action, the owner and/or operator of an asphalt manufacturing facility known as Shilling Construction Company, Inc., located at 321 McDowell Creek Road, Manhattan, Kansas 66502 (“Facility”), and the Facility operates under SIC 295.

16. The Facility consists of two separate parcels of land. The north section is owned by Shilling Construction and is approximately seven acres in size. There is also a separate three acre leased section directly to the south of the main parcel that is also operated by Shilling Construction since October 31, 2019. The north section contains aggregate, chat, reclaimed asphalt pavement (“RAP”) and cold patch asphalt piles, hot mix plant, office and maintenance buildings, overhead sprayer, aggregate hopper and conveyor system, equipment storage, used oil storage, and a tank farm. The south section is used for aggregate and equipment storage and contains an additional RAP pile.

17. The north company-owned section is divided into four drainage areas. Stormwater runoff within the drainage areas is directed to five stormwater inlets which connect to five stormwater outfalls that discharge to the Kansas River. The leased south section drains three directions. Stormwater from the east half flows into a ditch along McDowell Creek Road which directs stormwater west through a culvert into the Kansas River. Stormwater from the south end flows south, joins the flow from the McDowell Creek Road ditch, and continues flowing west into the Kansas River. Stormwater from the west half flows along a berm fronting the Kansas River. A breach in the berm allows stormwater to flow through the berm and directly into the Kansas River.

18. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharges via seven stormwater outfalls directly into the Kansas River.

19. The runoff and drainage from Respondent’s Facility are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

20. Stormwater from Respondent’s Facility contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and Section VIII of the Permit (Definitions), which state such discharges include stormwater discharges from facilities operating under SIC code 295.

22. The Facility is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. The Kansas River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

24. Stormwater runoff from Respondent’s industrial activity 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).

25. 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, 33 U.S.C. § 1342.

26. The Facility was authorized (G-KS38-0009) by the KDHE to discharge stormwater associated with industrial activity in accordance with the terms and conditions of the KDHE Stormwater Runoff from Industrial Activities General Permit. Initial application for authorization was submitted to KDHE by the Respondent on January 10, 2012. Coverage is provided through October 31, 2026. At all times relevant, the Respondent has operated under authorization of the Permit and the provisions of the Permit have remained substantially the same.

27. On or about May 19, 2021, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“EPA Inspection”) of Respondent’s Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with KDHE General Permit and the CWA.

28. During the EPA Inspection, the EPA inspector reviewed Respondent’s records related to the General Permit and observed the Facility and the Facility’s stormwater outfalls and stormwater controls.

29. During the inspection, EPA documented the following conditions relevant to Respondent’s compliance with the General Permit:

- a. The Facility did not have a complete SWPPP, only an outdated map from October 31, 2010, that did not contain all the elements required by Section 2.4.2(b) of the Permit such as all buildings, material storage areas, overhead truck sprayer, aggregate piles, and RAP piles. The SWPPP also did not address the addition of the leased property which was added October 31, 2019.
- b. Site inspections were not documented as required in the General Permit under Sections 2.4.3(d) and 2.4.4 of the Permit.
- c. Two stormwater inlets had no controls and three stormwater inlets had controls that were degraded and in need of maintenance. Sediment and debris were found in all stormwater inlets.
- d. Stormwater runoff was flowing from a RAP pile located in the southern leased

portion of the site through a breach in the berm and directly into the Kansas River without any controls prior to discharging.

- e. The Facility was not utilizing best management practices (“BMPs”) to prevent pollutants from entering stormwater runoff:
 - i. Spills and leaks were noted around a dryer/mixer unit and secondary containment structures.
 - ii. Used oil barrels were stored without any pollution prevention measures or labeling. A secondary containment valve was left open potentially allowing polluted stormwater to be released with no monitoring.
 - iii. Asphalt release agent runoff from the overhead sprayer has potential to combine with stormwater and enter a stormwater inlet.
- f. Discharges from the secondary containment valve and the overhead sprayer are unauthorized stormwater discharges according to 2.4.3(g) of the General Permit.

30. At the conclusion of the inspection, the EPA inspector issued the Respondent a Notice of Potential Violation (“NOPV”) identifying issues determined to be potential violations of Respondent’s authorization under the General Permit, including but not limited to:

- a. Inadequate SWPPP;
- b. Lack of maintenance to BMPs;
- c. Site inspection reports not available during the inspection; and
- d. Lack of adequate stormwater controls.

31. The EPA NOPV offered the Respondent an opportunity to reply and address any of the potential violations identified by the EPA inspector. Respondent provided multiple responses to the EPA inspector by email starting May 19, 2021. These responses stated that Shilling Construction hired a consultant to draft a new SWPPP and included a completed site inspection form. Photos were provided showing BMPs installed around stormwater inlets, closure of the berm gap, removal of sediment and rock deposits from stormwater inlets, cleanup of spills, and closure of the secondary containment valve.

32. A copy of the Inspection report was emailed by the EPA to Respondent on July 8, 2021.

EPA’s Findings of Violation

Count 1

Unauthorized Non-Stormwater Discharge

33. The allegations stated above are re-alleged and incorporated herein by reference.

34. Part 1.4 of the General Permit states that the General Permit does not authorize any other wastewater treatment system or the discharge of sewage, pollutants or wastewater to waters of the State. Only non-stormwater discharges listed in Part 1.2 of the General Permit are authorized provided the Facility has evaluated and implemented BMPs to minimize pollutants in stormwater discharges.

35. During the EPA Inspection, the inspector observed that the overhead truck sprayer does not completely shut off between truck applications and was actively dripping chemical asphalt release agent onto a paved area. Stormwater runoff from the sprayer area combines with releasing agent and is allowed into a pipe which directs the flow west into stormwater inlets. These inlets then discharge via an outfall into the Kansas River. This non-stormwater discharge is not listed in the General Permit and is therefore unauthorized.

36. Respondent's discharge of non-stormwater from the Facility to the Kansas River, as documented by the EPA Inspection is an unauthorized discharge and is a violation of the conditions of Respondent's General Permit and Sections 301(a) and/or 402 (p) of the CWA, 33 U.S.C. §§ 1311(a) and/or 1342(p).

Count 2

Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP

37. The allegations stated above are re-alleged and incorporated herein by reference.

38. Part 2.1 of the General Permit required that a SWPPP be developed that is specific to the industrial activity and site characteristics occurring at the permitted location. The permittee shall fully implement and periodically review, and update as necessary, the provisions of the SWPPP. The SWPPP shall be developed and implemented within ten months of authorization by KDHE and shall submit a SWPPP Completion Certification Form to KDHE.

39. Part 2.4 of the General Permit states that the SWPPP shall contain, at a minimum, the following items:

- a. Facility description including production activities conducted at the Facility;
- b. Pollution Prevention Team listing specific individuals or positions who are responsible for developing, implementing, maintaining, and revising the SWPPP. Each member's responsibilities shall be clearly identified. The activities and responsibilities of the team shall address all aspects of the Facility's SWPPP;
- c. Description of potential pollutant sources which may be reasonably be expected to add significant pollutants to the stormwater discharge. The description shall include at a minimum:
 - i. A general location map;
 - ii. A site map identifying the scale, location of significant structures, the outlined drainage areas, direction of flow, approximate acreage of each stormwater outfall, stormwater conveyances and area inlets for each outfall, all authorized non-stormwater discharge locations, name of water body the Facility discharges to, location of significant materials, storage tanks, scrap yards, general refuse areas, fuel storage and distribution areas, vehicle and equipment storage and maintenance areas, loading and unloading areas, short and long term material storage areas, stock piles, areas where spills have occurred and residues remain, and existing structural control measures;

- iii. Inventory of exposed materials including a narrative description of significant materials handled, treated, stored, leaked, spilled, or disposed of in a manner which would allow for exposure to stormwater within the period starting three years prior to the date of the permit, structural and non-structural control measures, and any treatment the stormwater receives. A list of significant spills and leaks of hazardous materials in exposed areas shall be maintained and kept updated; and
 - iv. Risk identification and summary of potential pollutant sources including a narrative description of potential pollutant sources, their location, and pollutant parameters of concern.
- d. Measures and controls listing and description of stormwater management controls, administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the Facility that addresses the following minimum components including a schedule for implementation of:
- i. Good housekeeping measures;
 - ii. Preventative maintenance schedule for inspection and maintenance of stormwater management controls;
 - iii. Spill prevention and response procedures;
 - iv. Inspection frequency at appropriate intervals as specified in the SWPPP but at a minimum of quarterly and identification of Facility personnel trained to inspect. A set of tracking or follow-up procedures shall be used to ensure that all appropriate actions are taken in response to the inspections;
 - v. Employee training for implementing activities identified in the SWPPP at all levels of responsibility for both new and existing employees;
 - vi. Record keeping documenting incidents along with other information which may impact stormwater quality and quantity. Reporting procedures, inspections, and maintenance activities shall be developed and included in the SWPPP;
 - vii. Identification of all unauthorized, non-stormwater discharges directed to surface water or groundwater;
 - viii. Sediment and erosion control to minimize erosion in areas which have high potential for significant soil erosion; and
 - ix. Management of runoff including a description and location on a site map of existing or proposed stormwater management practices to treat, divert, infiltrate, reuse, or otherwise manage stormwater runoff in a manner that reduces pollutants in stormwater discharges from the site.
- e. Comprehensive site compliance evaluation conducted at least once a year including documentation of inspection and any actions taken as a result; and
- f. Records of visual examination of stormwater quality at each identified stormwater outfall at a frequency stated in the SWPPP but at a minimum of once per year and any stormwater sampling data used to evaluate the effectiveness of the SWPPP and/or BMPs.

40. Part 2.4.6 of the General Permit further requires that the SWPPP shall be re-evaluated and modified in a timely manner but in no case more than ninety days after a change in

design, construction, operation, or maintenance that has a significant effect on the potential for the discharge of pollutants or a visual inspection of stormwater discharges or monitoring indicate that the SWPPP appears to be ineffective.

41. Respondent's SWPPP at the time of EPA's inspection was dated October 31, 2010, and only consisted of a SWPPP map. The SWPPP map had not been updated to include changes to the site during the intervening time including but not limited to the addition of material storage areas, overhead truck sprayer, aggregate piles, or RAP piles and did not include the leased south portion of the Facility which was added on October 31, 2019.

42. As summarized above, the EPA finds that at the time of EPA's Inspection Respondent failed to have an adequate and accurate SWPPP, and/or to have updated or amended the Facility's SWPPP to describe current Facility conditions, as required by Part 2.4.6 of the Permit.

43. Respondent's failures to develop an adequate and accurate SWPPP and/or to update or amend the Facility's SWPPP to reflect current Facility conditions are each violations of the conditions and limitations of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3
Failure to Implement and/or Maintain Appropriate Controls

44. The allegations stated above are re-alleged and incorporated herein by reference.

45. Part 2.1 of the General Permit required the development and implementation of the Facility's SWPPP within ten months of KDHE's authorization of the permittee's NOI.

46. Part 2.4.2 of the General Permit requires that potential pollutant sources which may reasonably be expected to add significant pollutants to the stormwater discharge shall be identified.

47. Part 2.4.3 of the General Permit requires the Facility to develop and implement structural and non-structural stormwater management controls and BMPs that are appropriate for the Facility.

48. Part 2.4.3(i) of the General Permit requires that identified potential pollutant sources shall be considered when determining reasonable and appropriate measures to implement.

49. Part 2.4.3(b) of the General Permit requires that the SWPPP provide a schedule for inspection and maintenance of stormwater management controls.

50. The EPA Inspector observed the Facility's stormwater management controls, including structural controls and best management practices (BMPs) and documented the following:

- a. Two of five stormwater inlets had no stormwater controls;
- b. Three of five stormwater inlets had controls that were degraded, not operating as designed, and in need of maintenance;
- c. Sediment, rock, aggregate material, and debris were found in stormwater inlets;
- d. Breach in the berm along the Kansas River allowing stormwater to flow through with no BMPs prior to discharging;
- e. Evidence of spills outside secondary containment structures and dryer/mixer unit, Open valve from secondary containment structure potentially allowing stormwater to flow out without monitoring;
- f. No controls around aggregate and RAP piles near stormwater inlets, and;
- g. Leaking overhead sprayer for releasing agent.

51. As summarized above, the EPA finds that Respondent failed to implement and/or maintain appropriate controls as required by Part 2.2 of the General Permit.

52. Respondent's failure to implement adequate stormwater management controls is a violation of the conditions and limitations of the General Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to Conduct and/or Document Visual Stormwater Monitoring

53. The allegations stated above are re-alleged and incorporated herein by reference.

54. Part 2.4.5 of the General Permit requires that the permittee periodically, but at a minimum of once per year, perform and document a visual examination of a stormwater discharge associated with industrial activity from each identified stormwater outfall. Visual examination reports shall be maintained onsite and be made available for inspection upon request.

55. Part 3.1 of the General Permit requires that all records required by the general permit shall be maintained for a period of three years. All records shall be kept onsite or in a readily accessible location.

56. At the time of EPA's inspection, Respondent did not have visual stormwater monitoring records from 2017 through the date of the Inspection.

57. As summarized above, the EPA finds that Respondent failed to document visual stormwater monitoring and/or maintain records, as required by Part 2.4.5 and Part 3.1 of the General Permit.

58. Respondent's failure to document visual stormwater monitoring and/or to maintain records of such are violations of the conditions and limitations of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

59. The Respondent has started documenting and maintaining records for all site inspections since the EPA Inspection.

Count 5

Failure to Conduct and/or Document Quarterly Inspections

60. The allegations stated above are re-alleged and incorporated herein by reference.

61. Part 2.4.3(b) of the General Permit requires that the SWPPP shall describe a preventative maintenance program that provides a schedule for inspection and maintenance of stormwater management controls.

62. Part 2.4.3(d) of the General Permit requires that trained Facility personnel shall inspect at appropriate intervals, but at a minimum of quarterly, designated equipment and storage areas for raw materials, finished product, chemicals, recycling, equipment, paint, fueling and maintenance, loading and unloading areas, and waste management areas. A set of tracking or follow up procedures shall be used to ensure that appropriate actions are taken in response to the inspection and shall include completion dates for correction. Records of inspections shall be maintained on-site or in a readily accessible location for at least three years after the date of the inspection.

63. At the time of EPA's inspection, Respondent did not have quarterly inspection or maintenance records from May 2018 through May 2021.

64. As summarized above, the EPA finds that Respondent failed to document quarterly inspections and maintain records as required by Part 2.4.3 of the General Permit.

65. Respondent's failure to document inspections and maintain records are violations of the conditions and limitations of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6

Failure to Conduct and/or Document Comprehensive Site Compliance Evaluations

66. The allegations stated above are re-alleged and incorporated herein by reference.

67. Part 2.4.4 of the General Permit requires a comprehensive site compliance evaluation be conducted and documented at least once a year. If the comprehensive site evaluation does not identify any noncompliance, the report shall include a statement that the Facility is in compliance with the SWPPP and the conditions of the permit.

68. Part 3.1 of the General Permit requires that all records required by the permit shall be kept on-site or in a readily accessible location for a period of three years.

69. At the time of the EPA inspection, the Respondent had no comprehensive site compliance evaluation reports for 2017 through the date of the Inspection.

70. As summarized above, the EPA finds that the Respondent failed to document annual evaluations of the Facility from 2017 through the date of the Inspection as required by Part 2.4.4. and Part 3.1 of the General Permit.

71. Respondent's failure to document annual evaluations and/or to maintain records of such evaluations are violations of the conditions and limitations of the General permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 7
Failure to Conduct and/or Document Employee Training**

72. The allegations stated above are re-alleged and incorporated herein by reference.

73. Part 2.4.3(e) of the General Permit requires that employee training be provided for new and existing staff responsible for stormwater management of the components and goals of the SWPPP.

74. Part 3.1 of the General Permit requires that all records required by the permit shall be kept on-site or in a readily accessible location for a period of three years.

75. At the time of the EPA inspection, the Respondent had no employee training records available for 2017 to 2020.

76. As summarized above, the EPA finds that the Respondent failed to conduct and/or document employee trainings for the Facility from 2017 to 2020 as required by Part 2.4.3(e) and Part 3.1 of the General Permit.

77. Respondent's failure to conduct and/or document employee trainings are violations of the conditions and limitations of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Reasonable Time to Achieve Compliance

78. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that three (3) months is a reasonable time for Respondent to achieve compliance with the terms and conditions of its Permit.

Order for Compliance on Consent

79. Based on the EPA Findings set forth above, and pursuant to Sections 308 and 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

80. In accordance with this Order, the Respondent shall take all necessary actions 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 its industrial stormwater NPDES Permit, including, but not limited to:

- a. Immediately implement and maintain BMPs to prevent unauthorized discharges;
- b. Revise the Facility's SWPPP to meet all applicable requirements of the NPDES Permit;
- c. Maintain stormwater management controls to prevent the discharge of pollutants and conduct adequate good housekeeping at the Facility as required by the General Permit, and described in the revised SWPPP; and
- d. Conduct and document all inspections and training in accordance with the General Permit and the Facility SWPPP.

81. By no later than sixty (60) days following the Effective Date, Respondent shall provide a report to the EPA, with a copy to the KDHE, that includes:

- a. A copy of the updated SWPPP and map for the Facility;
- b. A copy of the report of the annual comprehensive site compliance evaluation, quarterly inspections, visual monitoring, and employee training that have been conducted since the May 2021 EPA inspection; and
- c. A description and photographic documentation of all additional actions, maintenance, structural controls, and non-structural controls taken to bring the Facility into full compliance with all conditions and limitations of the Permit; and

82. By no later than 120 days following the effective date, Respondent shall sample and test stormwater from each of its outfalls to determine if stormwater controls are effective at the site. All samples shall be grab samples and shall be collected during the first 30 minutes of discharge resulting from a storm event greater than 0.1 inches in magnitude and that occurs at least 72 hours from a previous storm event that resulted in a discharge from the site. Parameters for testing shall include total suspended solids, chemical oxygen demand, pH, oil and grease, and lead (Pb). The lab results shall be provided to the EPA, with a copy to KDHE.

83. The EPA may, after review of the SWPPP, inspection reports, sampling results, and description of actions taken submitted by Respondent, provide written comments and suggestions regarding such submittals. Review and comment on the SWPPP or other submissions by the EPA does not relieve Respondent of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

84. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are necessary and may modify this Order or initiate a separate enforcement action, as appropriate.

Reports/Submissions

85. Semi-Annual Reporting. In addition to the reports required above, Respondent

shall submit semi-annual reports describing the actions it has taken to ensure continued compliance with the terms of its Permit and this Order. These reports are due to the EPA, with a copy to KDHE, by no later than October 1, 2022, and April 1, 2023. Each report shall include, at a minimum, the following information for the previous six (6) months:

- a. A copy of the report for each quarterly site inspection and for the annual comprehensive site inspection and visual monitoring if conducted;
- b. A description of all employee training that has been conducted; and
- c. A detailed description of all actions taken or planned actions to bring the Facility into full compliance with all conditions and limitations of the Permit, including any updates or amendments to the SWPPP and any additional structural or non-structural controls added to the site.

86. Submittals. All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph below, shall be submitted by electronic mail to:

kleffner.erin@epa.gov

Erin Kleffner, or her successor
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

87. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

88. All documents required to be submitted pursuant to this Order shall also be submitted by electronic mail to KDHE to the address provided below:

Tom.stiles@ks.gov

Tom Stiles
Kansas Department of Health and Environment
Director, Bureau of Water
1000 SW Jackson Street
Topeka, KS 66612

89. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision 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 fine and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

90. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

91. 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. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 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 the 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

92. Nothing in this Order shall limit the 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

93. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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

94. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

95. At the EPA's sole discretion, extensions of the compliance schedules / deadlines required by this Order may be made by the EPA by written notice to Respondent, without further

formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

96. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.


For the Complainant, U.S. Environmental Protection Agency:

Issued on the ____ day of _____, 2022.

David Cozad
Director
Enforcement and Compliance Assurance Division

Chris Muehlberger
Senior Counsel
Office of Regional Counsel

For the Respondent, Shilling Construction Company, Inc.:



Signature

8-18-22

Date

Steven Altobello

Name

Treasurer

Title

Certificate of Service

I certify that on the date noted below I delivered this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, by electronic mail to r7_hearing_clerk_filings@epa.gov.

I further certify that a true and correct copy of the foregoing Administrative Order for Compliance on Consent sent this day in the following manner to the addressees:

Copy by email to Respondent:

Shilling Construction Company, Inc.
Attention: Steven Altobello
9620 E. US Highway 24
Manhattan, Kansas 66502
steve@shilconst.com

Copy by email to EPA:

Chris Muehlberger
U.S. Environmental Protection Agency - Region 7
Muehlberger.christopher@epa.gov

And

Erin Kleffner
U.S. Environmental Protection Agency – Region 7
Kleffner.erin@epa.gov

Copy by email to the Kansas Department of Health and Environment:

Tom Stiles
Kansas Department of Health and Environment
Tom.stiles@ks.gov

Date

Signature