

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)

Mid-States Materials, LLC)
Big Springs Quarry)
2 North 1700 Road)
Lecompton, Kansas 66050)

Respondent.)

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

Docket No. CWA-07-2010-0131

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 Mid-States Materials, LLC, a limited liability corporation under the laws of Kansas and authorized to conduct business in the State of Kansas.

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 (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 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.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater 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 stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

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

9. 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. 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 a facility known as Big Springs Quarry, located at 2 North 1700 Road, Lecompton, Kansas 66050 (the Site).

12. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into an unnamed tributary of Deer Creek. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

14. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), 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 a tributary of Deer Creek, “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

16. 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).

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. KDHE issued the Respondent NPDES Permit No. KS0089923, which became effective on August 8, 2007, and expires December 31, 2011. The permit governs stormwater discharges associated with industrial activity.

19. On or about September 23-24, 2009, 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 management of stormwater at the site in accordance with the CWA.

Findings of Violation

20. The facts stated in Paragraphs 11 through 19 above are herein incorporated.

Count 1

Inadequate Facility Operation

21. Section 8 of the Standard Conditions of Respondent's permit, Facility Operation, requires that all treatment, collection, control systems or facilities must be maintained in good working order to achieve compliance with the terms of this permit, including the elimination of Outfall 3.

22. The EPA inspection referenced in Paragraph 19, above, documented that Respondent failed to operate the facility in good working order. Specifically, Outfall 3 was not adequately eliminated, continued discharging, and control systems were not in place to prevent the migration of sediment to the receiving stream. As a result, sediment was deposited in the unnamed tributary.

23. Respondent's failure to adequately operate portions of the facility 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), and implementing regulations.

Count 2

Failure to Update the Stormwater Pollution Prevention Plan (SWPPP)

24. Attachment A, Section 6 of Respondent's NPDES Permit requires that the SWPPP

be re-evaluated and modified in a timely manner, but in no case more than 90 days after a change in design, construction, operation or maintenance that has a significant effect on the potential for the discharge of pollutants.

25. The EPA inspection referenced in Paragraph 19 above, documented that Respondent failed to update the SWPPP, particularly the Site Map, to reflect current site activities, drainage patterns, the new sediment ponds, and the asphalt plant.

26. Respondent's failure to update the SWPPP 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), and implementing regulations.

Count 3

Failure to Follow Proper Sampling Procedures

27. Section 4 of the Standard Conditions of Respondent's NPDES Permit requires that all analysis required by Respondent's permit conform to the requirements of 33 U.S.C. Section 1314(h), which details specific sampling procedure requirements.

28. The EPA inspection referenced in Paragraph 19, above, documented that Respondent failed to follow the sampling procedures of 33 U.S.C. Section 1314(h). Specifically, Respondent consistently exceeded holding times for pH sampling and exceeded holding times for TSS samples in March and April 2008.

29. Respondent's failure to follow proper sampling procedures 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), and implementing regulations.

Count 4

Failure to Document Site Inspections

30. Attachment A, Section 5(a) of Respondent's NPDES Permit requires that Respondent periodically perform and document a visual examination of stormwater discharge. Each record shall include the date of inspection.

31. The EPA inspection referenced in Paragraph 19 above, documented that Respondent failed to properly document Respondent's visual examination of stormwater discharge. Specifically, Respondent included photographs in inspection documentation during August and September 2007 that referenced incorrect inspection dates.

32. Respondent's failure to follow properly document inspections 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), and implementing regulations.

Order For Compliance

33. 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 34 and 35.

34. Within thirty (30) days of the Effective Date of this Order, as defined in Paragraph 41 herein, Respondent shall take all corrective action that is necessary to eliminate and prevent recurrence of the violation cited in this Order and to come into compliance with all of the applicable requirements of Respondent's Permit.

35. Within thirty (30) days of the Effective Date of this Order, as defined in Paragraph 41 herein, Respondent shall submit a written report detailing the specific actions taken to correct the violation cited herein to EPA at the address listed in Paragraph 36 below.

Submissions

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

Mr. Raju Kakarlapudi
Water Enforcement Branch
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

37. 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.

38. 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 Section 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 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

39. 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

40. 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.

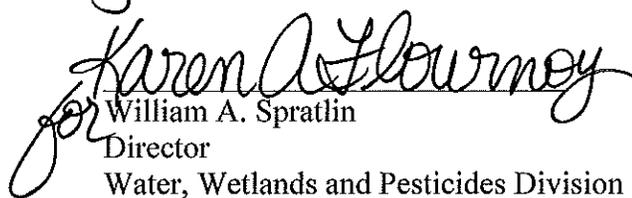
Effective Date

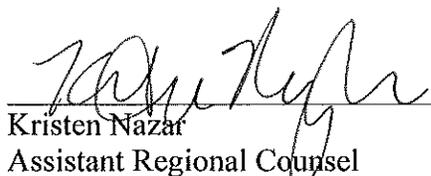
41. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

Termination

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

Issued this 13th day of August, 2010.


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Kristen Nazar
Assistant 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 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:

Mr. Eric H. Bettis
Registered Agent
Mid-States Materials, LLC
1132 Chetopa Trail
Topeka, Kansas 66615-1407;

and via first class mail to:

Mr. Karl Muedener
Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

AUG 17 2010

Date

