

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 )  
)  
Randall Transit Mix Co. )  
1343 Highway 105 )  
P.O. Box 153 )  
Northwood, IA 50459 )  
)  
Respondent )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
)  

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Docket No. CWA-07-2008-0065

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

2. Respondent is Randall Transit Mix Co. (hereinafter, "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)(iii) defines "storm water discharge associated with industrial activity", in part, as mineral industries, "including ... production, processing, or treatment operations, or transmission facilities that discharge storm water that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations ..."

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. 1 to Respondent on October 1, 1992. The permit governs storm water discharges associated with industrial activity, including those "primarily engaged in manufacturing portland cement concrete delivered to a purchaser in a plastic and unhardened state ..."

#### 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 sand and/or gravel operation, known as Randall Transit Mix Co., located at 1343 Highway 105, Northwood, Iowa (the Site).

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes directly and/or into Ditch No. 2, a tributary of the Shell Rock 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 Ditch No. 2, a tributary of the Shell Rock River.

18. 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 10, 2002, Respondent submitted a NOI for coverage under the IDNR General Permit No. 1.

21. Permit #IA-1252-1016 was issued to Respondent and will expire on September 30, 2008.

22. On June 5, 2006, the ready-mix concrete operation formerly owned by Randall Transit Mix Co. was purchased and later registered with the Iowa Secretary of State as "Randall Ready Mix, LLC." The remainder of Randall Transit Mix Co.'s operation exists as a sand and/or gravel facility.

23. On March 19, 2008, 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 compliance with the CWA.

#### Findings of Violation

#### **Failure to Obtain a Permit**

23. The facts stated in Paragraphs 1 through 22, above, are herein incorporated.

24. 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 to seek coverage under an approved storm water permit. Sections 301 and 402 of the CWA prohibit discharges of

pollutants into waters of the U.S. without a NPDES permit.

25. The EPA inspection referenced in paragraph 22 above revealed that Respondent failed to submit a Notice of Intent with IDNR to obtain a General Permit No. 3 for sand and gravel operations.

26. Respondent's failure to submit a Notice of Intent with IDNR and failure to obtain a new NPDES permit is a violation of 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) and CWA §§ 301 and 402.

#### Order For Compliance

27. 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 28 through 33.

28. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever actions necessary to correct the deficiencies cited herein and eliminate and prevent recurrence of the violations, including:

- a) Submitting a Notice of Intent to IDNR to obtain a new General Permit No. 3.
- b) Revising Respondent's Storm Water Pollution Prevention Plan (SWPPP), developed by qualified personnel, in compliance with IDNR General Permit No. 3.

29. Within sixty (60) days of the effective date of this Order, the Respondent shall submit to EPA a copy of Respondent's IDNR General Permit No. 3 and Respondent's revised SWPPP.

30. 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, notify EPA of Respondent's status in meeting the terms of this Order.

31. In the event Respondent states that it does not intend to comply with the terms of this Order and/or fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order and/or seek additional penalties for such noncompliance with the terms of Order.

32. EPA will review Respondent's revised SWPPP, and notify Respondent in writing of EPA's approval or disapproval of the SWPPP, or any part thereof. If the SWPPP is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within ten (10) days of receipt of EPA's disapproval pertaining to the SWPPP, Respondent shall amend/revise the disapproved SWPPP, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised SWPPP, EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, EPA will notify Respondent of the modification and approval.

33. Upon receipt of EPA's approval of Respondent's SWPPP, Respondent shall implement such plan in accordance with the schedule contained therein.

#### Submissions

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

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

#### General Provisions

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

35. 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.

36. 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 CWA for any violation whatsoever.

Access and Requests for Information

37. 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

38. 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


39. 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

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

Issued this 2nd day of July, 2008.

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



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Chris Muehlberger  
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:

Mr. Alan Brunsvold  
Site Manager  
Randall Transit Mix Co.  
1343 Highway 105  
P.O. Box 153  
Northwood, Iowa 50459;

Mr. Ed Tormey  
Bureau Chief, Legal Services  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319;

Mr. Dennis Ostwinkle  
Coordinator, Wastewater Enforcement  
Iowa Department of Natural Resources  
1023 W. Madison Street  
Washington, Iowa 52353;

Mr. Jeff Vansteenburgh  
Supervisor  
Iowa Department of Natural Resources  
2300 15th Street SW  
Mason City, Iowa 50401

7/2/08  
Date

Kathy Rowman  
Sender