



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

JAN 17 2012

CERTIFIED MAIL—RETURN RECEIPT REQUESTED: (7001 0360 0003 6675 0691)

Mr. Geoff McMahon, President  
Morningstar Minerals Corporation  
22 County Road 3957  
Farmington, NM 87401

Re: Administrative Order, Docket Number: CWA-06-2012-1721  
Notice of Proposed Assessment of Class I Civil Penalty  
Docket Number: CWA-06-2012-1722  
NPDES Facility Number: NMU001745

Dear Mr. McMahon:

On December 21, 2011, we sent an Administrative Order as well as an Administrative Complaint (Complaint) issued to Morningstar Minerals Corporation regarding the above captioned matter for violation of the Clean Water Act. The complaint was sent via certified mail to the address we have on file at P.O. Box 9, Farmington, NM 87499. However, it was returned to our office as undeliverable. In our second attempt to reach you, the Administrative Order, Complaint and accompanying cover letter that was originally mailed are enclosed for your consideration and response.

If you have updated contact information or if you wish to discuss the possibility of settlement, please contact Mrs. Linda Smith at (214) 665-6641. We look forward to your timely response to ensure a prompt and fair resolution to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christina T. Kracher", with a long horizontal flourish extending to the right.

Christina T. Kracher  
Assistant Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

DEC 15 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: (7005 1820 0003 7453 9684)

Mr. Geoff McMahon, President  
Morningstar Minerals Corporation  
P.O. Box 9  
Farmington, NM 87499

Re: Administrative Order, Docket Number: CWA-06-2012-1721  
Notice of Proposed Assessment of Class I Civil Penalty  
Docket Number: CWA-06-2012-1722  
NPDES Facility Number: NMU001745

Dear Mr. McMahon:

Enclosed are an Administrative Order (AO) and a proposed Administrative Complaint (Complaint) issued to Morningstar Minerals Corporation for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The violation was identified during a storm water inspection of your humate mill and manufacturing facility, conducted by the New Mexico Environment Department on June 28, 2011. The results were discussed with your representative at the time of the inspection. The violation alleged is for the unpermitted discharge of pollutants, specifically humate, from the facility and into waters of the United States during three (3) rainfall events of one-half inch or greater which occurred during the period of July 2010 to July 2011. In addition, there were no Best Management Practices implemented.

The AO requires compliance with applicable federal regulations within thirty (30) days of its receipt. The Complaint assesses a monetary penalty for the violation. If it can be demonstrated that the violation cited in the AO has been corrected in a timely manner, the Environmental Protection Agency (EPA) has the right to negotiate the penalty amount down or perhaps mitigate the penalty amount partially by way of a Supplemental Environmental Project (SEP). The SEP must benefit the environment in the watershed where the violation occurred and must not be required by the permit or other laws.

You have the right to request a hearing regarding the violation alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$10,800.00 may be assessed against you without further proceedings. Whether or not you request a hearing, we invite you to confer informally with the EPA.

Re: Administrative Order  
Morningstar Minerals Corporation

2

The EPA is committed to ensuring compliance with the requirements of the NPDES program, and my staff will assist you in any way possible. If you have any questions, or wish to discuss this matter, please contact Mrs. Linda Smith, of my staff, at (214) 665-6641.

Sincerely,



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosures

cc: w/Complaint-Regional Hearing Clerk

Mr. James Bearzi  
Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2011 DEC 21 PM 3:04

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Morningstar Minerals Corporation,  
a New Mexico Company,

Respondent

NPDES Facility No. NMU001745

§ Docket No. CWA-06-2012-1722  
§  
§  
§ Proceeding to Assess a  
§ Civil Penalty under Section 309(g)  
§ of the Clean Water Act  
§  
§ ADMINISTRATIVE COMPLAINT  
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 ("Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

## II. Findings of Fact and Conclusions of Law

1. Morningstar Minerals Corporation (“Respondent”) is a company incorporated under the laws of the State of New Mexico, and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
2. At all times relevant to this action (“all relevant times”), Respondent owned or operated a humate mill and manufacturing facility, located at #44 County Road 3697, in Farmington, San Juan County, New Mexico (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” with its industrial storm water to the receiving waters of the Animas River, which is considered a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.
5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.



6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Pursuant to Section 402(a) of the Act, EPA issued the Storm Water General Permit for Industrial Activities (65 Fed. Reg. No. 210, 64746-64880, September 16, 2008) (“permit”). The general permit authorized “storm water discharges associated with industrial activity” to “waters of the United States” (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

8. On June 28, 2011, the facility was inspected by storm water inspectors from the New Mexico Environment Department (“NMED”). As a result of the inspection, it was found that the Morningstar Minerals Corporation was discharging pollutant-laden storm water from the facility site into the Animas River without coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (NMR050000) and without adequate Best Management Practices to reduce the pollutants.

9. A review of EPA’s permit applications database established that Respondent had not applied for, or obtained, NPDES permit coverage by filing a Notice of Intent to be covered by a NPDES general permit for discharges from the facility.

10. The facility, therefore, discharged pollutants to waters of the United States without the authority of an NPDES permit from July 2010 to July 2011 (three rainfall events of

one-half (½) inch or more that resulted in discharges from the facility). The facility was informed of the need to obtain NPDES permit coverage and develop a Storm Water Pollution Prevention Plan (“SWPPP”) by NMED at the time of the June 28, 2011 inspection.

11. Each unauthorized discharge event was a violation of Section 301 of the Act, 33 U.S.C § 1311.

12. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

13. EPA has notified the NMED of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

14. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comment filed by the public.

### III. Proposed Penalty

15. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA

Region 6 hereby proposes to assess against Respondent a penalty of ten thousand eight hundred dollars (\$10,800.00).

16. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which included such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

#### IV. Failure to File an Answer

17. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to the Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

19. If Respondent does not file an Answer to this complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could



make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

20. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Christina Kracher (6RC-EW)  
Water Legal Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

21. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

#### V. Notice of Opportunity to Request a Hearing

22. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant

to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

23. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

24. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

#### VI. Settlement

25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mrs. Linda Smith, of my staff, at (214) 665-6641.

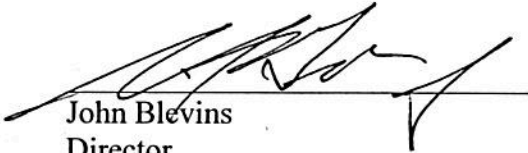
26. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a

Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

27. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a) including one relating to the violations alleged herein.

Date

12/15/11

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

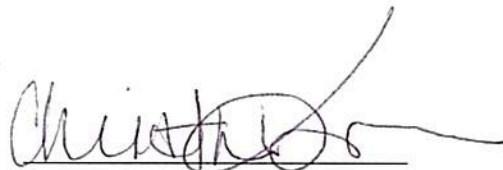
Original hand-delivered: Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Copy by certified mail,  
return receipt requested: Mr. Geoff McMahon, President  
Morningstar Minerals Corporation  
22 County Road 3957  
Farmington, NM 87401

Mr. James Bearzi  
Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Copy hand-delivered: Ms. Christina Kracher (6RC-EW)  
Water Legal Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Dated: 1/17/12

  
Christina Kracher





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

Docket Number: CWA-06-2012-1721, NPDES Facility Number: NMU001745

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. Morningstar Minerals Corporation ("Respondent") is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

2. At all times relevant to this Order, Respondent owned or operated a humate mill and manufacturing facility, located at #44 County Road 3697, in Farmington, San Juan County, New Mexico ("facility") and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2. The mailing address for the Respondent is Morningstar Minerals Corporation, P.O. Box 9, Farmington, NM 87499.

3. At all times relevant to this Order, the facility acted as a "point source" of a "discharge" of "pollutant[s]" into the receiving waters of the Animas River, which is considered a "water of the United States" as defined by Section 502 of the Act, 33 U.S.C. § 1362 and 40 C.F.R. § 122.2. As a result, Respondent and facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

4. On June 28, 2011, the New Mexico Environment Department (NMED) conducted an inspection of Morningstar Minerals Corporation and found discharges of pollutants (humate) into a drain which flows into the Animas River. The Animas River, from the San Juan River to the Estes Arroyo, is an impaired stream for the designated uses for aquatic habitat, and primary contact recreation. Discharges such as those observed by the NMED contribute to the impairment of the Animas River.

5. Since 2000, and through the time period relevant to this Order, the facility conducted activities that would deem it an industry as identified under 40 C.F.R. § 122.26(b)(14)(iii), which operates under Sector J, Standard Industrial Classification (SIC) Code 1499 and 40 C.F.R. § 122.26(b)(14)(ii), which operates under Sector C,

SIC Code 2833. The facility is subject to the General Permit for Storm Water Discharges Associated with Industrial Activity ("permit") issued by the EPA on September 16, 2008.

6. According to the EPA database that records all applications for storm water general permit coverage, Respondent did not submit a Notice of Intent ("NOI") for permit coverage for its activities at the facility, and was not covered by a NPDES permit at the relevant times for the relevant activities. During the time period from July 2010 to July 2011, there were three (3) rain events of one-half (½) inch or greater that resulted in unauthorized discharges from the facility.

7. As a result of the June 28, 2011, NMED inspection, and previous rainfall records, the facility was found to be in violation of Section 301 of the Act, 33 U.S.C. § 1311 for the discharge of pollutants into waters of the United States without the authorization of a NPDES permit.

ORDER

Based on these findings and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA hereby orders the Respondent to take the following actions:

A. Effective immediately, the Respondent shall cease all unauthorized discharges of pollutants (humate) to the Animas River.

B. Within ten (10) days of the effective date of this Order, Respondent shall submit an NOI to the EPA NOI processing center to obtain coverage for the facility under the permit. The NOI should be submitted by one of the following methods:

- 1) By regular mail to:  
Storm Water Notice Processing Center  
U.S. EPA, MC 4203M  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460
- 2) By overnight/express mail to:  
Storm Water Notice Processing Center  
U.S. EPA, Room 7420  
1201 Constitution Ave., NW  
Washington, DC 20004

- 3) Via the internet at:  
<http://cfpub.epa.gov/npdes/stormwater/enoi>



For a status update on your NOI, call the NOI Center at (866) 352-7755.

C. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA Region 6, a certified copy of the NOI for coverage under the NPDES permit submitted to the EPA NOI Processing Center.

D. Within thirty (30) days of the effective date of this Order, Respondent shall develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") tailored specifically for the facility. The SWPPP should detail best management practices, inspections, benchmark sampling and analysis, and other measures taken to reduce or eliminate the discharge of pollutants to the Animas River. Respondent shall also submit a copy of the SWPPP to EPA for review. Guidance in developing the SWPPP maybe found via the internet: [www.epa.gov/npdes/stormwater/swppp](http://www.epa.gov/npdes/stormwater/swppp).

E. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written certification of compliance with this Order to EPA Region 6. All correspondence should be addressed to:

Mrs. Linda Smith  
Water Enforcement Branch (6EN-WM)  
EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

#### GENERAL PROVISIONS


Issuance of this Order shall not be deemed an election by EPA to waive any administrative or judicial, civil or criminal action to seek penalties, fines, or other relief under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligation to comply with all applicable federal, state, or local laws or regulations.

The effective date of this Order is the date it is received by the Respondent.

12-15-11  
Date

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division