

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, CA 94105

FILED
2010 NOV 15 PM 3:25
REGIONAL OFFICE

In the Matter of:

A Plus Materials Recycling

250 Port Road 23
Stockton, California, 95203

Respondent.

Docket No.: CWA-09-2010-0003

**ANSWER TO COMPLAINT AND
REQUEST FOR HEARING PURSUANT
TO SECTION 309(g)(2)**

Proceeding Under Section 309(g)(2)(B) of the
Clean Water Act, as amended, 33 U.S.C. §
1319(g)(2)(B)

COMES NOW A PLUS MATERIALS RECYCLING (hereinafter "Respondent") and answering for itself and no other responds as follows to the Complaint and Notice of Proposed Penalty submitted by the United States Environmental Protection Agency ("EPA").

1. As to the allegations contained in the Paragraph 16 of the Complaint, Respondent admits the allegations contained therein.
2. As to the allegations contained in the Paragraph 17 of the Complaint, Respondent admits the allegations contained therein.
3. As to the allegations contained in the Paragraph 18 of the Complaint, Respondent admits the allegations contained therein.
4. As to the allegations contained in the Paragraph 19 of the Complaint, Respondent admits that the pollutants listed might be discharged from scrap facilities and/or ready mix concrete facilities. However, Respondent denies that any such pollutants were ever discharged from its facility.

5. As to the allegations contained in the Paragraph 20 of the Complaint, Respondent admits the allegations contained therein.

6. As to the allegations contained in the Paragraph 21 of the Complaint, Respondent admits that storm drains are part of the Port of Stockton's Municipal Separate Storm Sewer System. Respondent admits that this Stockton Ship Channel is a direct tributary of the tidally influenced San Joaquin River. As to any and all additional allegations contained within this paragraph, Respondent denies each and everyone of them.

7. As to the allegations contained in the Paragraph 22 of the Complaint, Respondent admits the allegations contained therein.

8. As to the allegations contained in the Paragraph 24 of the Complaint, Respondent admits, that on or about March 19, 2008, representatives of EPA Region 9 and the Regional Board inspected Respondent's facilities. As to every other allegation contained within Paragraph 24 denies said allegations and each of them.

9. As to the allegations contained in the Paragraph 25 of the Complaint, Respondent denies each and every allegation contained therein.

10. As to the allegations contained in the Paragraph 26 of the Complaint, Respondent denies each and every allegation contained therein.

11. As to the allegations contained in the Paragraph 27 of the Complaint, Respondent admits the allegations contained in this Paragraph.

12. As to the allegations contained in the Paragraph 28 of the Complaint, Respondent admits that, on or about December 15 and 16, 2008, Respondent collected storm water samples at its facility. As to every other allegation contained within said Paragraph, Respondent denies each

and every allegation contained therein.

13. As to the allegations contained in the Paragraph 29 of the Complaint, Respondent admits the allegations contained within this Paragraph as they describe the contents of the document issued on or about January 8, 2009 by the EPA. Respondent does not, by the admission of the contents of said document, admit that any of the allegations contained in the aforementioned document are true or correct.

14. As to the allegations contained in the Paragraph 30 of the Complaint, Respondent admits that it submitted a Notice of Completion of interim measures on or about January 23, 2009 identifying additional measures taken in compliance with requests from the EPA. As to any and all other allegations contained within this Paragraph, Respondent denies each and every one of them.

15. As to the allegations contained in the Paragraph 31 of the Complaint, Respondent admits the allegations contained therein.

16. As to the allegations contained in the Paragraph 32 of the Complaint, Respondent admits the allegations contained therein.

17. As to the allegations contained in the Paragraph 33 of the Complaint, Respondent admits that, on or about October 13, 2009, December 12, 2009 and April 2, 2010, Respondent collected storm water samples at its facility which were tested for pollutants. As to each and every allegations contained within this Paragraph, Respondent denies each and every one of them.

18. As to the allegations contained in the Paragraph 34 of the Complaint, Respondent denies each and every allegation contained therein.

19. As to the allegations contained within Paragraph 43, Respondent denies the allegations contained therein and each of them.

20. As to the allegations contained within Paragraph 45, Respondent denies the allegations contained therein and each of them.

21. As to the allegations contained within Paragraph 46, Respondent denies the allegations contained therein and each of them.

22. As to the allegations contained within Paragraph 47, Respondent denies the allegations contained therein and each of them.

23. As to the allegations contained within Paragraph 48, Respondent denies the allegations contained therein and each of them.

24. As to the allegations contained within Paragraph 50, Respondent denies the allegations contained therein and each of them.

25. As to the allegations contained within Paragraph 51, Respondent denies the allegations contained therein and each of them.

26. As to the allegations contained within Paragraph 52, Respondent denies the allegations contained therein and each of them.

27. As to the allegations contained within Paragraph 53, Respondent denies the allegations contained therein and each of them.

28. As to the allegations contained within Paragraph 54, Respondent denies the allegations contained therein and each of them.

29. As to the allegations contained within Paragraph 55, Respondent denies the allegations contained therein and each of them.

30. As to the allegations contained within Paragraph 56, Respondent denies the allegations contained therein and each of them.

31. As to the allegations contained within Paragraph 57, Respondent denies the allegations contained therein and each of them.

32. As to the allegations contained within Paragraph 60, Respondent denies the allegations contained therein and each of them.

33. As to the allegations contained within Paragraph 61, Respondent denies the allegations contained therein and each of them.

34. As to all other allegations contained within the Complaint, Respondent lacks sufficient information upon which to admit or deny said allegations and, on that basis, denies each and every one of them.

AFFIRMATIVE DEFENSES

FAILURE TO STATE A CAUSE OF ACTION

As a separate and distinct affirmative defense to the EPA's Complaint herein, and to each claim set forth therein, this answering Respondent alleges that the Complaint, fails to state facts sufficient to constitute the imposition of any penalty against this answering Respondent.

WAIVER

As a separate and distinct affirmative defense to the EPA's Complaint, and to each cause of action set forth therein, this answering Respondent alleges that the EPA is barred from assessing any penalty by reason of its conduct constituting a waiver of each such alleged cause of action.

RESERVATION OF DEFENSES

As a separate and distinct affirmative defense to EPA's Complaint, and to each claim set forth therein, this answering Respondent alleges that the EPA has failed to state its claims with sufficient particularity so as to allow this answering Respondent to raise all appropriate defenses, thus Respondent reserves the right to add defenses as the factual basis for the EPA's claims become known.

WHEREFORE, this answering Respondent prays that no penalty be assessed against it. In the event that the EPA chooses to pursue this matter, Respondent requests a hearing regarding the matter and that all of its due process rights be preserved.

Dated: November 11, 2010

BROWN, HALL, SHORE & McKINLEY



SCOTT L. HARPER
Attorneys for Respondent

PROOF OF SERVICE BY MAIL

I, the undersigned, am over the age of eighteen years and am a resident of San Joaquin County, California, I am not a party to this action; my business address is c/o BROWN, HALL, SHORE & MCKINLEY, LLP, 3031 West March Lane, Suite 230 West, Stockton, CA 95219.

On November 11, 2010, I served the following document(s):

ANSWER TO COMPLAINT AND REQUEST FOR HEARING PURSUANT TO SECTION 309(g)(2)

addressed to:

BRETT MOFFATT
ASSISTANT REGIONAL COUNSEL
OFFICE OF REGIONAL COUNSEL
U.S. EPA REGION 9 (OCR-2)
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

X **(BY OVERNIGHT MAIL SERVICE)** by placing the envelope for collection following our ordinary business practices for collection and processing correspondence for mailing by express or overnight mail.

 (BY MAIL) placing the envelope for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with the business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

 (BY OVERNIGHT MAIL SERVICE) by placing the envelope for collection following our ordinary business practices for collection and processing correspondence for mailing by express or overnight mail.

 (BY FACSIMILE) The person(s) by whose name an asterisk is affixed, were forwarded a copy of said documents by facsimile.

Executed under penalty of perjury on November 11, 2010 at Stockton, California.


RHONDA JONES