

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)

ALLIANCE CONCRETE, INC.)

Respondent)

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

) Docket No. CWA-07-2010-0115

) CONSENT AGREEMENT AND
) FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 ("Complainant") and Alliance Concrete, Inc., ("Respondent") have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order ("CAFO") serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 ("Complainant").

4. Respondent is Alliance Concrete, Inc., a company registered under the laws of Delaware and authorized to do business in the State of Iowa.

Statutory and Regulatory Framework

5. 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, 33 U.S.C. § 1342, 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.

6. The CWA prohibits the discharge of a "pollutant" from a "point source" into a "navigable water" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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, 33 U.S.C. § 1342(p), 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, 33 U.S.C. §§ 1311 and 1342.

8. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), 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," in part, as "the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." A facility classified as Standard Industrial Classification ("SIC") 14 that discharges stormwater contaminated by contact with, or 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, is engaged in "industrial activity." 40 C.F.R. § 122.26(b)(14)(iii).

11. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate streams and tributaries thereto.

12. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The IDNR implemented a General Permit for the discharge of stormwater under the NPDES Permit No. 5 on July 18, 2001. The permit governs stormwater discharges associated with industrial activity mining and processing facilities.

Factual Background

14. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility engaged in the mining or processing of construction sand and gravel; operation of a concrete batch plant; and operation of an asphalt plant, known as the Little Rock Pit located on the south side of Highway 9 (T99N, R43W; Section 3) near Little Rock, Iowa (the "Facility").

16. On July 9 and 10, 2008, contractors at the Facility discharged pollutants into the Little Rock River through a discharge pipe.

17. The discharge contained "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

19. The Little Rock River is a navigable water of the United States as defined by CWA Section 502, 33 U.S.C § 1362.

20. The discharge from Respondent's industrial facility resulted 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).

21. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

22. On or about January 21, 2009, Respondent resubmitted a Notice of Intent ("NOI") for coverage under Iowa General Permit No. 5., and therefore, was subject to the permit's requirements at all times relevant to this action.

23. On July 10, 2008, IDNR investigated a complaint at Respondent's Facility. IDNR referred this case to EPA.

Findings of Violation

Count 1

Violation of Effluent Limits

24. Paragraphs 1-23 are incorporated by reference as if fully set forth herein.

25. General Permit No. 5 Part III, Numeric Effluent Limitations sets the following limits for discharge from mine dewatering or materials preparation from the Facility. The limits became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall not exceed a maximum concentration for any day of 45 mg/l or a 30 day average of 30 mg/l;
- b. pH of the discharge shall not be less than 6.0 or greater than 9.0.

26. The IDNR investigation referenced above revealed that the discharge on July 9 and 10, 2008 exceeded the effluent limits set forth in Respondent's Permit.

27. IDNR samples showed TSS levels at the discharge pipe of 4,700 mg/l; at the discharge point into the Little Rock River of 5,900 mg/l; and downstream at 3,300 mg/l.

28. Respondent's discharge in excess of permit limits are violations of the terms and conditions of Respondent's NPDES permit, and as such, are violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 2

Failure to Conduct Required Sampling

29. Paragraphs 1-23 are incorporated by reference as if fully set forth herein.

30. General Permit No. 5, Part IV Monitoring and Reporting Requirements identifies the monitoring and reporting required of permit holders and the frequency of such monitoring and reporting.

31. General Permit No. 5, Part IV.A, states that for discharges resulting from the washing of material or combination of wash water and quarry dewatering the discharges shall be sampled at least monthly for each month during which a discharge occurs and shall be analyzed for TSS and pH.

32. The IDNR investigation referenced in Paragraph 23, above, revealed that Respondent had not sampled for the discharges that occurred in July 2008.

33. The Respondent's failure to conduct sampling 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).

CONSENT AGREEMENT

34. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

35. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

36. Respondent neither admits nor denies the factual allegations set forth above.

37. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CAFO.

38. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

40. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

41. This CAFO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

42. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent is in compliance with Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, with respect to the facility located on the south side of Highway 9 (T99N, R43W, Section 3) near Little Rock, Iowa.

43. The effect of settlement described in paragraph 41 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 42 above, of this CAFO.

44. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty-Eight Thousand Dollars and No Cents (\$28,000.00) as set forth in Paragraph 1 of the Final Order.

45. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Eight Thousand Dollars and No Cents (\$28,000.00) due within thirty (30) days of the effective date of this CAFO.
2. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.
3. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

In the matter of:
Alliance Concrete, Inc.
Consent Agreement and Final Order
EPA Docket No.: CWA-07-2010-0115

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2010-0115.

Copies of the check shall be mailed to:

Sara Hertz Wu
Assistant Regional Counsel
U.S. Environmental Protection Agency -- Region 7
901 North 5th Street
Kansas City, Kansas 66101

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

5. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

General Provisions

6. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

8. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

In the matter of:
Alliance Concrete, Inc.
Consent Agreement and Final Order
EPA Docket No.: CWA-07-2010-0115

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

6-22-10
Date

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

S. H. Wu
Sara S. Hertz Wu
Assistant Regional Counsel

In the matter of:
Alliance Concrete, Inc.
Consent Agreement and Final Order
BPA Docket No.: CWA-07-2010-0115

RESPONDENT:
ALLIANCE CONCRETE, INC.

6/18/2010
Date



Name (Print) PETER BREWIN

Title VICE PRESIDENT of
Ready Mix

In the matter of:
Alliance Concrete, Inc.
Consent Agreement and Final Order
EPA Docket No.: CWA-07-2010-0115

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer



Date

IN THE MATTER OF Alliance Concrete, Inc., Respondent
Docket No. CWA-07-2010-0115

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sara S. Hertz Wu
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michelle Kales
Brownstein Hyatt Farber Schrek
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202-4432

Copy by First Class Mail to:

Tom Roos
Iowa Department of Natural Resources
Field Office #3
1900 North Grand
Spencer, Iowa 51301-2200

and

Dennis Ostwinkle, Supervisor
Iowa Department of Natural Resources
Field Office #6
1023 Madison Street
Washington, Iowa 52353

Dated: 8/4/10


Kathy Robinson
Hearing Clerk, Region 7