



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), 33 U.S.C. § 1342(p), 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 Section 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), 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 to seek coverage under a promulgated storm water permit.

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

9. The IDNR issued a General Permit to Randall Transit Mix Co. for the discharge of storm water under the NPDES, Permit No. 1252-1016 (General Permit No. 1). The general 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

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 concrete ready mix plant known as Randall Ready Mix, LLC, located five miles east of Northwood, Iowa (the Plant).

12. During the time periods of the discharges associated with industrial activity into Ditch No. 2, a tributary of the Shell Rock River, Respondent owned and/or operated the property on which the discharges took place.

13. Storm water, snow melt, surface drainage and runoff water flows from the Plant via No. 2 Ditch, a tributary into 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 from the Plant is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The Plant is a "point source" which has caused and continues to cause the "discharge of pollutants" as defined by CWA Section 502, 33 U.S.C. § 1362.

17. Respondent discharged pollutants via No. 2 Ditch, a tributary into the Shell Rock River, which is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

18. 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, 33 U.S.C. § 1342.

19. Randall Transit Mix Co. applied for and was issued NPDES permit coverage under the General Permit described above. IDNR issued Randall Transit Mix Co. Permit No. 1252-1016 on September 20, 2005.

20. On June 5, 2006, the Plant was purchased from Randall Transit Mix Co. and later registered with the Iowa Secretary of State as "Randall Ready Mix, LLC."

21. On March 19, 2008, EPA performed an inspection of the Plant under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate compliance with the CWA.

### Findings of Violation

#### **Count 1**

#### **Failure to Obtain NPDES Permit**

22. The facts stated in Paragraphs 1 through 21, above, are herein incorporated.

23. 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.

24. EPA's inspection referenced in paragraph 21 above revealed that Respondent failed to submit a Notice of Intent with IDNR concerning the change in ownership from Randall Transit Mix Co. to Randall Ready Mix, LLC to obtain a NPDES permit.

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

## Count 2

### Discharge without a NPDES Permit

26. The facts stated in Paragraphs 1 through 25, above, are herein incorporated.

27. Sections 301 and 402 of the CWA prohibit discharges of pollutants into waters of the U.S. without a NPDES permit.

28. EPA inspection referenced in paragraph 21 above revealed that, as a result of the Plant's topography and proximity to a stream, stormwater runoff associated with heavy rainfall events discharges pollutants into Ditch No. 2, a tributary to a navigable water.

29. Respondent's discharge of pollutants associated with industrial activity is a violation of CWA §§ 301 and 402.

### Order For Compliance

30. Based on the Findings of Fact 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 the paragraphs below

31. 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 of Respondent's change in ownership to obtain a new General Permit No. 1.
- b) Revising Respondent's Storm Water Pollution Prevention Plan (SWPPP), developed by qualified personnel, in compliance with IDNR General Permit No. 1.

32. 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. 1 and Respondent's revised SWPPP.

33. 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.

34. 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 the Order.

35. 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.

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

#### Submissions

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

Michael Boeglin  
WWPD/WENF  
EPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

#### General Provisions

38. 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.

39. 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 Sections 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

40. 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

41. 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.

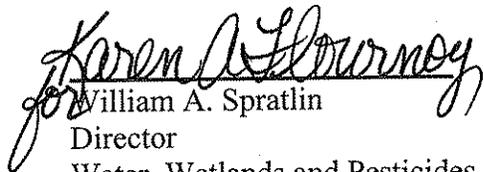
Effective Date

42. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, WWPDP, EPA Region VII.

Termination

43. 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.

  
for William A. Spratlin  
Director

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



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 Administrative 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. Patrick Bergin  
Environmental Manager  
Randall Ready Mix, LLC  
11 4<sup>th</sup> Street Northeast  
Mason City, Iowa 50402-1567;

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 Robinson