

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0237
Ash Grove Cement Company)	
)	
)	
Respondent)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance on Consent (Order) is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA is vested in the Administrator of the U.S. Environmental Protection Agency (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.
2. The Respondent in this case is Ash Grove Cement Company (Respondent).
3. The EPA, together with the Respondent, enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 et seq., to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
4. It is the Parties’ intent through entering into this Order to address noncompliance by the Respondent of its National Pollutant Discharge Elimination System (NPDES) permit. As set forth in this Order on Consent, the Parties have reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.
5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor

denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a NPDES permit.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 112.2 (1993), and which include tributaries to waters of the United States.

9. Section 402 of the CWA, 33 U.S.C. § 1342, sets forth requirements for the issuance of NPDES permits for the discharge of pollutants. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

11. 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity,” in part, as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications (SIC) 10 through 14, which includes establishments primarily engaged in mineral industries, SIC 14. *See* 40 C.F.R. § 122.26(b)(14)(iii). SIC code 1422 is specific to facilities and products produced using crushed and broken limestone.

12. 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

13. The Nebraska Department of Environmental Quality (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402

of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

FACTUAL BACKGROUND

14. Respondent is a “person,” as defined by Section 502(5) of CWA, 33 U.S.C. § 1362(5).
15. At all times relevant to this action, Respondent was the owner and operator of a Cement Quarry and Cement Production Facility (Facility), comprised of approximately 800 acres, and located at 16215 State Highway 50, Louisville, Nebraska.
16. Process waste water from noncontact cooling water, building floor drains, and quarry dewatering, as well as stormwater, snow melt, surface drainage and runoff water leave Respondent’s facility and discharge to either Mill Creek, Cedar Creek and/or the Platte River.
17. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), and is a “point source” as defined by Section 502(14) of CWA, 33 U.S.C. § 1362(14).
18. Process wastewater and stormwater at the facility contain “pollutants” as defined by Section 502(6) of CWA, 33 U.S.C. § 1362(6).
19. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of CWA, 33 U.S.C. § 1342.
20. Respondent’s Facility has permitted Outfalls including but not limited to, Outfalls 003, 006 and 007. Outfall 006 discharges stormwater runoff and quarry dewatering from the east quarry sedimentation basin to Cedar Creek. Outfall 007 discharges stormwater runoff and quarry dewatering from the west quarry sedimentation basin. Outfall 007 flows through a drainage channel and comingles with effluent from the cement plant area of Outfall 003 prior to final discharge through Outfall 003 to Mill Creek. Discharges from Outfall 003 travel approximately 300 yards before discharging into the Platte River.
21. Cedar Creek, Mill Creek and The Platte River are all “waters of the United States,” as that term is defined in 40 C.F.R. § 112.2 (1993).
22. NDEQ issued the NPDES Permit No. NE0000787 to the Respondent on June 19, 2017. The permit will expire on June 30, 2022. This NPDES permit governs the Respondent’s wastewater and stormwater discharges at the Outfalls detailed therein, that are associated with industrial activity at the Facility.
23. On February 20, 2018, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a), inspected the Facility to determine Respondent’s compliance with its NPDES permit and the CWA.

FINDINGS OF VIOLATION

Failure to Comply with Effluent Limitations

24. Respondent's NPDES permit establishes effluent limitations for Total Suspended Solids, (TSS) at Outfalls including Outfall 006 and Outfall 007.

25. Discharge Monitoring Reports (DMRs) reviewed from January 2013 through June of 2018, show TSS limitations were violated during several quarters from both Outfalls 006 and 007 including, but not limited to, the following:

- a. Outfall 006 during the 2nd and 3rd Quarters of 2016, the 1st, 2nd and 4th Quarters of 2017, and the 1st Quarter of 2018; and
- b. Outfall 007 during the 3rd Quarter of 2013, the 2nd Quarter of 2014, 2nd and 3rd Quarters of 2016, the 1st Quarter of 2017.

26. Respondent's failure to comply with the NPDES permit effluent limitations as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.

27. Within sixty (60) days of the effective date of this Order or as provided herein, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the effective General Permit, as authorized and applicable to the Facility.

28. The Facility has taken the following actions during times relevant to this Order or shall do so prior to submittal of the Compliance Plan addressed below.

- a. Retain a new consultant to review issues with Outfalls 006 and 007;
- b. Installation of rip-rap along water travel path to settling pond;
- c. Seeding of earthen berms;
- d. Road grading and installation of rip-rap along relevant haul road areas;
- e. Installation of quarry pit/settling pond sump system;
- f. Dredging and expansion of settling pond to outfall 6 and other modifications to reduce discharge volumes;
- g. Reduction of allowable trafficways;

- h. Experimentation with barley straw for algae blooms as algae is believed to cause or substantially contribute to TSS at Outfall 7; and
- i. Addition of a new settling pond for haul road runoff.

29. *Compliance Plan.* By the later of November of 2018 or sixty (60) days after the effective date of this Order, the Facility shall submit to the EPA, with a copy to the NDEQ, a comprehensive written plan (the "Compliance Plan") for achieving compliance with the Facility's NPDES Permit no later than June 30, 2019.

- a. The Compliance Plan shall describe in detail the actions to be taken or work to be completed, and how such actions or work will enable the Facility to achieve compliance with the effluent limitations prescribed by the Facility's NPDES Permit.
- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than June 30, 2019.
- c. The Facility will submit a status report regarding the progress on the proposed actions/work no later than February 28, 2019.
- d. The EPA will promptly review, and may provide comments on, the Facility's Compliance Plan.

30. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the Facility shall submit a written certification to the EPA, with a copy to the NDEQ, that it has completed all actions required pursuant to this Order on Consent and achieved compliance with its NPDES Permit.

31. All submitted documents, required to be submitted to EPA by this Order, shall be submitted by electronic mail to Angela Acord at acord.angela@epa.gov.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph to:

Angela Acord, Compliance Officer
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

GENERAL PROVISIONS

Effect of Compliance with the terms of this Order

32. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

33. 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 of the CWA, 33 U.S.C. § 1319, 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

34. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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

35. 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.

Parties Bound

36. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

Failure to Comply

37. Failure to comply with the terms of this Order may result in Respondent's liability for significant statutory civil penalties for each violation under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the Northern District of Iowa may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of Respondent's violations, Respondent's economic benefit resulting from the violations, any history Respondent may have of such violations, any good faith efforts Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Act and for any violations of this Order.

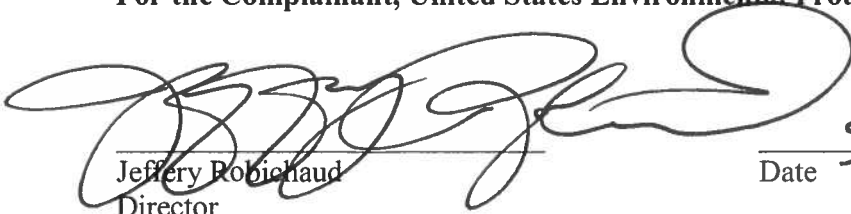
Effective Date

38. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

Termination

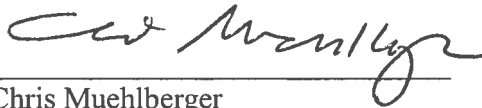
39. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

For the Complainant, United States Environmental Protection Agency, Region 7:



Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division

Date 9/14/18



Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

Date 8.27.18

For the Respondent, Ash Grove Cement Company.


Name

8/17/2018
Date

Vice President Environmental Affairs
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Ash Grove Cement Company
CT Corporation System, Registered Agent
5601 South 59th Street
Lincoln, Nebraska 68516

and

Steve Goans
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509.

9.17.18

Date