

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2018-0007
Kerford Limestone Company	)	
Weeping Water, Nebraska	)	FINDINGS OF VIOLATION AND
Respondent	)	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 and Administrative Order for Compliance on Consent (“Order”) are made and issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is Kerford Limestone Company (“Respondent”), a corporation under the laws of the state of Nebraska. Respondent is the owner and/or operator of a facility located within Cass County, near Weeping Water, Nebraska.

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 in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater and without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C § 1344. As set forth in this Order on Consent, the Parties have amicably 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. The parties agree that the specific factual allegations and Findings of Violation in this Order shall not bind Respondent in proceedings before another agency nor be relied upon by any other agency for any type of determination made thereby, and that this Order is not intended to benefit or bind any party or agency that is not a party to this proceeding.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, except in compliance with, *inter alia*, Sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342, 1344. Section 402 of the CWA provides that pollutants may be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section.

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 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 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.

9. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

10. 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.

11. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity,” 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 material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications (“SIC”) 10 through 14, mineral industry, including SIC code 1422. *See* 40 C.F.R. § 122.26(b)(14)(iii). SIC code 1422 specifically includes establishments primarily engaged in mining or quarrying crushed and broken limestone.

12. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency within the state of Nebraska that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

13. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

14. Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the United States Army Corps of Engineers (hereinafter “Corps”), for any discharge of “dredged or fill material” into the “navigable waters” of the United States.

15. 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. § 232.2 and 33 C.F.R. Part 328, and which include tributaries to, waters of the United States.

16. 40 C.F.R. § 232.2 defines “Discharge of fill material” as “the addition of fill material into waters of the United States.”

17. 40 C.F.R. § 232.2 defines “fill material” as material that “replaces any portion of the waters of the United States with dry land” or which “changes the bottom elevation of a water of the United States.”

18. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, requiring such person to comply.

### **EPA’s General Allegations**

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

20. At all times relevant for this action, Respondent is and was the owner and/or operator of a facility consisting of two subsurface limestone mines, the North Creek Mine and the Creek Mine, a garage / shop, and a mill / crusher area and that performs limestone mining, crushing, milling, and storage of various sizes of limestone and lime (“facility” or “site”), operating under SIC code 1422, located on Fletcher Avenue west of State Highway 50 near Weeping Water, Nebraska.

21. Weeping Water Creek and an unnamed tributary to Weeping Water Creek flow south through the facility. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s site through one of at least four outfalls and flow to Weeping Water Creek.

22. A road with a constructed stream crossing on the facility property crosses Weeping Water Creek and connects the Creek Mine to the mill / crusher area. The constructed stream crossing consists of rock and gravel material. At the time of inspection, Respondent’s representative stated that the crossing has two 36-inch culverts. The crossing was constructed and is maintained and/or repaired by Respondent using earth moving or other heavy equipment.

23. Weeping Water Creek and its unnamed tributary are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

24. Weeping Water Creek is on the 303d list as impaired for E. coli, without an EPA-approved total daily maximum load (“TMDL”).

25. Stormwater from the site contains “pollutants,” and fill materials consisting of rock and gravel are “pollutants,” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

26. Earth moving and other heavy equipment and trucks constitute a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

27. Rock and gravel material constitute “fill material” and its placement or release in Weeping Water Creek constitutes the “discharge of fill material” as defined by 40 C.F.R. § 232.2.

28. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the construction, maintenance and/or repair of the stream crossing referenced in Paragraph 22 above and/or Respondent did not perform the work described herein in compliance with any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

29. Stormwater discharges associated with industrial activity are “point sources” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. The facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14).

31. Stormwater runoff from industrial activity at Respondent’s above referenced facility results 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).

32. Respondent’s discharge of pollutants, including discharges of stormwater 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.

33. On November 8, 2016, NDEQ granted authorization to the facility under General Industrial Stormwater Permit NER910284, for discharges of stormwater runoff to Weeping Water Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. Previously, the facility received authorization in January 2012 to discharge pursuant to NPDES General Industrial Stormwater Permit NER900282, which expired in June 2016. Respondent’s previous and current NPDES permits are substantially the same in all relevant respects for this action (hereinafter “NPDES Permit”).

34. On April 10, 11, and 13, 2017, the EPA performed an Industrial Stormwater Inspection (“Inspection”) of Respondent’s site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.

35. During the Inspection, the EPA inspector toured the facility, observed discharge locations, photographed various stormwater-related areas, and obtained copies of the facility’s stormwater pollution prevention plan (“SWPPP”), routine SWPPP inspection reports, training records, and monitoring data.

36. A Notice of Potential Violation (“NOPV”) was issued by the EPA inspector at the conclusion of the Inspection.

37. By letter dated April 21, 2017, Respondent provided information in response to the NOPV (hereinafter “NOPV Response”).

38. A copy of the Inspection report was sent to Respondent by the EPA by letter dated July 14, 2017.

### **EPA’s Findings**

#### **Count 1**

#### **Unauthorized Stream Crossing**

39. The facts stated in Paragraphs 1 through 38 above are re-alleged and incorporated herein by reference.

40. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with a CWA Section 404 permit.

41. During the EPA inspection, the inspector observed the constructed stream crossing referenced in Paragraph 22 above and a significant deposit of large rocks and gravel in the stream channel and along the banks of Weeping Water Creek just south of the stream crossing.

42. During the EPA inspection, facility personnel stated that the constructed stream crossing is washed-out approximately three times per year by high flows, indicating that the road crossing impairs the flow or circulation of Weeping Water Creek and requires frequent repair or maintenance.

43. Subsequent to the EPA inspection, Respondent’s representative asserted that the crossing was constructed between 1990 and 1991 and was authorized by a nationwide permit in effect at that time for “minor road crossing fill”, defined as the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water, provided that the crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows. 33 C.F.R. § 330.5(a)(14)(1988); 51 Fed. Reg. 41,206 (Nov. 13, 1986). Respondent’s representative also stated that large rocks from the top of the stream crossing become displaced into the stream and/or on the stream banks, necessitating maintenance of the stream crossing.

44. Observations by the EPA inspector and EPA's review of photographs taken during the EPA inspection and other aerial photographs reveal that the culverts at the crossing appear to be undersized and that the material observed in the stream channel and along the banks of Weeping Water Creek, due to its size and proximity to the crossing, appears to be material washed off the crossing. Thus, these observations and photographs indicate that the crossing is not in compliance with the nationwide permit referenced in Paragraph 43 above because it is not culverted, bridged or otherwise designed to prevent the restriction of and to withstand expected high flows.

45. Respondent's construction and maintenance of the stream crossing without proper design in compliance with a nationwide permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, results in the discharge of pollutants from a point source into waters of the United States and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

**Count 2  
Unauthorized Discharges or Unauthorized Fill**

46. The facts stated in Paragraphs 1 through 45 above are re-alleged and incorporated herein by reference.

47. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with an NPDES permit issued pursuant to CWA Section 402 or a CWA Section 404 permit.

48. Section 2.1 of Respondent's NPDES Permit requires Respondent to minimize pollutant discharges from the facility in a variety of ways. Section 2.1.2.10 of Respondent's NPDES Permit requires Respondent to eliminate non-stormwater discharges not authorized by an NPDES Permit.

49. During the EPA Inspection, the inspector observed significant deposits of large rocks and gravel on the banks and within the stream channel of Weeping Water Creek near the constructed stream crossing and in several locations near where berm repairs were needed, indicating that Respondent failed to implement practices to reduce pollutants in stormwater discharges or, in the alternative, that Respondent discharged fill material into Weeping Water Creek.

50. Respondent's alleged discharges of rocks and gravel into Weeping Water Creek are not authorized by Respondent's NPDES permit and occurred without or in violation of a permit issued pursuant to Section 404 of the CWA, and, therefore, these discharges violated Sections 301(a) and 402 or 404 of the CWA, 33 U.S.C. §§ 1311(a), 1342, 1344.

**Count 3**

**Failure to Implement, Maintain and/or Modify Adequate Controls**

51. The facts stated in Paragraphs 1 through 50 above are re-alleged and incorporated herein by reference.

52. Sections 2.1, 2.1.1, 2.1.2.5, and 2.1.2.6 of Respondent's NPDES Permit require the facility to select, design, install, and implement control measures to minimize exposure of pollutants to stormwater and minimize stormwater discharges. Further, Section 2.1 provides that if the control measures are not achieving their intended effect of minimizing pollutant discharges, the facility must modify these control measures as expeditiously as practicable. Section 2.1.2.3 requires that the facility maintain all control measures and to make all necessary repairs or modifications as expeditiously as practicable.

53. During the EPA Inspection, the inspector observed several locations where berms were in need of repair and significant deposits of rocks and gravel on the banks and in the stream channel of Weeping Water Creek near those locations, indicating that control measures are not being implemented, not being maintained, or are inadequate and need to be modified.

54. Respondent's failure to implement, maintain and/or modify adequate control measures is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4**

**Failure to Conduct and/or Document Routine Facility Inspections**

55. The facts stated in Paragraphs 1 through 54 above are re-alleged and incorporated herein by reference.

56. Section 4.1.1 of Respondent's NPDES Permit requires Respondent to conduct routine inspections each quarter, with at least one per year conducted when stormwater is discharging off-site or to an on-site retention structure. Sections 4.1.2 and 5.4 of Respondent's NPDES Permit require Respondent to document the findings of each routine facility inspection and maintain this documentation onsite with the SWPPP.

57. At the time of the EPA inspection, the facility did not have records of routine inspections conducted for any quarters of 2014, two quarters of 2015, any quarters of 2016, and the first quarter of 2017.

58. Respondent's failure to conduct and/or document routine facility inspections is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 5**

#### **Failure to Conduct and/or Document Comprehensive Site Inspections**

59. The facts stated in Paragraphs 1 through 58 above are re-alleged and incorporated herein by reference.

60. Section 4.3.1 of Respondent's NPDES Permit requires Respondent to conduct and document an annual comprehensive site inspection that covers all areas of the facility, including potential pollutant sources and control measures, reviews monitoring data, and considers visual and analytical monitoring results to determine if corrective actions are needed. Sections 4.3.2 and 5.4 of Respondent's NPDES Permit require Respondent to document the findings of each comprehensive site inspection and maintain the documentation onsite with the SWPPP.

61. At the time of the EPA inspection, the facility did not have records of annual comprehensive site inspections conducted for the years 2013, 2014, 2015, or 2016.

62. Respondent's failure to conduct and/or document annual comprehensive site inspections is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 6**

#### **Failure to Conduct and/or Document Quarterly Visual Assessments**

63. The facts stated in Paragraphs 1 through 62 above are re-alleged and incorporated herein by reference.

64. Section 4.2.1 of Respondent's NPDES Permit requires Respondent to collect a stormwater sample from each outfall quarterly and conduct a visual assessment of each sample, observing for characteristics such as color, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. Sections 4.2.2 and 5.4 require Respondent to document the results of the visual assessments and maintain this documentation onsite with the SWPPP.

65. At the time of the EPA inspection, the facility did not have any records of quarterly visual assessments.

66. Respondent's failure to conduct and/or document quarterly visual assessments is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 7**

#### **Failure to Perform Monitoring and Respond to Benchmark Exceedances**

67. The facts stated in Paragraphs 1 through 66 above are re-alleged and incorporated herein by reference.



68. Section 6.2 of Respondent's NPDES Permit requires the facility to conduct quarterly benchmark monitoring for total suspended solids ("TSS") in accordance with Sections 3.2, 6.2.1.2, and 8.J.8, and annual impaired waters monitoring for E. coli in accordance with Section 6.2.2.2.

69. Section 6.2.1.2 of Respondent's NPDES Permit requires that if the value of the average of four quarterly benchmark monitoring values exceeds the benchmark of 100 mg/l for TSS, the facility must review the selection, design, installation, and implementation of control measures to determine if modifications are necessary and either make the necessary modifications and continue benchmark monitoring until four additional quarters show no further exceedances, or document and notify NDEQ of the rationale for a determination that no further pollutant reductions are technologically available and economically practicable. Further, Section 3.2 of Respondent's NPDES Permit requires that if less than four quarterly samples have been taken, but an exceedance of the benchmark level is mathematically certain, then the control measures review and modification process outlined above is triggered. Section 5.4 of Respondent's NPDES Permit requires documentation of any benchmark exceedances and the facility's response to be kept with the SWPPP.

70. A review of the facility's monitoring records showed that the facility failed to collect benchmark monitoring samples quarterly, although the facility collected one sample for TSS annually in 2013, 2015 and 2016, and that the facility failed to collect any annual samples for E. coli.

71. The annual TSS samples taken in 2015 and 2016 exceeded the benchmark at two of the facility's outfalls by more than four times the benchmark value. At the time of the EPA inspection, the facility did not have documentation of the required review of control measures or a determination of whether modifications were necessary, nor did NDEQ have any notification of such determination.

72. Respondent's failure to perform monitoring and failure to follow the process to review control measures in response to benchmark exceedances and/or document the response to benchmark exceedances is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 8  
Failure to Conduct and/or Document Employee Training**

73. The facts stated in Paragraphs 1 through 72 above are re-alleged and incorporated herein by reference.

74. Section 2.1.2.9 of Respondent's NPDES Permit requires Respondent to train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit at least annually. Section 5.4 of Respondent's NPDES Permit requires records of employee training, including date training received, to be kept with the SWPPP.

75. At the time of the EPA Inspection, the facility did not have records of training conducted in 2013, 2015, or 2016.

76. Respondent's failure to conduct employee training is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Order for Compliance on Consent**

77. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

78. Respondent shall comply with the CWA by immediately ceasing unauthorized discharges of pollutants and/or fill material into Weeping Water Creek and taking steps to ensure that such discharges do not occur in the future.

79. By no later than thirty (30) days from the effective date of this Order, Respondent shall either:

- a. Contact the U.S. Army Corps to request a determination of compliance with any prior permit issued pursuant to CWA Section 404 or obtain permit authorization for the discharge of fill material to construct or maintain a road crossing and:
  - i. Upon obtaining such determination or authorization, Respondent shall submit a copy to the EPA within thirty (30) days of receipt; or
  - ii. If Respondent fails to obtain such determination or authorization within twelve (12) months of such a request, then Respondent shall submit a Work Plan within thirty (30) days of that date pursuant to the terms below or submit a request to EPA to extend such deadline pursuant to Paragraph 94 below; or
- b. Submit a Work Plan to EPA for review and approval that shall describe Respondent's proposed removal of fill material in its entirety at the stream crossing and restoration of the area to its original elevation, as follows:
  - i. The Work Plan should include, at a minimum: the projected work and materials necessary to restore the site, including characterization of the soil, plant, and hydric conditions and best management practices that will be used to control soil erosion and sediment runoff; the projected cost of the work; a projected schedule for completing the work; and a monitoring plan to maintain and document proper wetland and/or stream functions.
  - ii. If EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved work plan.

- iii. If EPA does not approve the Work Plan, Respondent shall address the comments and resubmit the work plan for review within thirty (30) days of receipt of EPA's disapproval.
- iv. Upon resubmission, EPA, in its sole discretion, may either approve the Work Plan, or if EPA determines that the Work Plan does not adequately address the comments provided by EPA, EPA may modify the work plan and will provide Respondent with a copy of the work plan as modified. Respondent shall implement the modified Work Plan according to the schedule contained therein.
- v. Once approved by EPA, the Work Plan shall be incorporated by reference and fully enforceable under the terms of this Order.
- vi. Once the work identified in the Work Plan has been completed, Respondent agrees to submit a complete report, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete. This report shall be submitted to EPA within thirty (30) days of completion.

80. In accordance with this Order, Respondent shall take all necessary actions 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 its industrial stormwater NPDES Permit, including, but not limited to:

- a. Install, repair, or modify appropriate stormwater management controls to prevent the discharge of pollutants as required by the NPDES Permit;
- b. Conduct and document routine facility inspections and annual comprehensive site inspections in accordance with the NPDES Permit;
- c. Perform monitoring and visual assessments of stormwater and retain records of all monitoring information as required by the NPDES Permit;
- d. Follow the review process and take action to respond to benchmark exceedances and maintain documentation of the response as required by the NPDES Permit; and
- e. Conduct employee training in accordance with the NPDES Permit.

81. By no later than sixty (60) days from the effective date of this Order, the Respondent shall submit a written report to EPA to include the following:

- a. A written description and photographic documentation of measures taken to address stormwater management controls in need of repair, modification, or installation;
- b. Copies of routine facility inspection reports conducted from the date of the EPA inspection to date, and a copy of the annual comprehensive site inspection conducted for 2017;
- c. A copy of all monitoring data, and visual assessments of stormwater from the date of the EPA inspection to date;
- d. A copy of documentation showing employee training in accordance with the NPDES permit has been conducted; and
- e. A written description and photo documentation, if appropriate, of any other actions taken to date to achieve compliance with the NPDES Permit.

82. Respondent shall submit to the EPA, with a copy to NDEQ, reports on or before June 30, 2018 and December 31, 2018 including a copy of the two prior consecutive quarterly benchmark sampling results for Outfalls 001 - 004 for TSS and E. coli and, if results exceed permitted benchmark limits as described in Section 6.2.1.2 of Respondent's NPDES Permit and Paragraph 69 above, provide a description of actions taken as required by the NPDES permit.

83. The EPA may, after review of the reports and records and description of actions taken submitted by Respondent pursuant to the above Paragraphs, provide written comments and suggestions regarding such submittals. Review and comment on the submissions by the EPA does not relieve Respondents of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

84. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

### **Reports/Submissions**

85. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 88 below, shall be submitted by electronic mail to:

acord.angela@epa.gov

Angela Acord, or her successor  
U.S. Environmental Protection Agency – Region 7  
Water, Wetlands and Pesticides Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

86. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

87. All documents required to be submitted to NDEQ pursuant to this Order shall be submitted by mail to:

Steve Goans  
Nebraska Department of Environmental Quality  
1200 N. Street, Suite 400  
PO Box 98922  
Lincoln, NE 68509-8922

88. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

89. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

90. 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. The 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 the 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**

91. Nothing in this Order shall limit the 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**

92. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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**

93. 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 the EPA.

### **Modification**

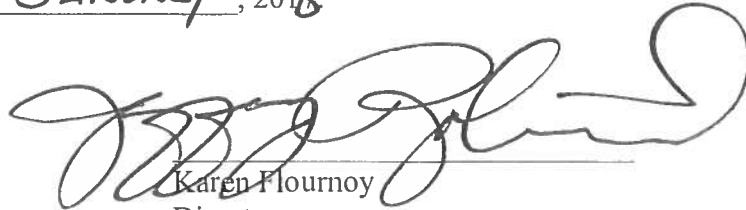
94. At the EPA's sole discretion, extensions of the compliance schedule / deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

### **Termination**

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

**For the Complainant, U.S. Environmental Protection Agency:**

Issued this 23<sup>RD</sup> day of JANUARY, 2018

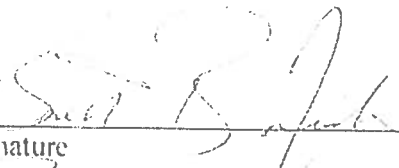


Karen Flournoy  
Director  
Water, Wetlands and Pesticides Division

Shane E.C. McCoin

Shane E. C. McCoin  
Assistant Regional Counsel  
Office of Regional Counsel

For the Respondent, Kerford Limestone Company:

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 1/19/18

\_\_\_\_\_  
Name Brett B. Niebur

\_\_\_\_\_  
Title President