

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 )

River Products Company, Inc. )  
3273 Dubuque Street, N.E. )  
Iowa City, Iowa 52244 )

Respondent )

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

) Docket No. CWA 07-2010-0057

) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of 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 United States 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 River Products Company, Inc., a corporation registered under the laws of the State of Iowa and authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

3. 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, 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.

4. 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.

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) of the CWA, requires, in part, that a discharge of storm water associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, 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 or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(vi) 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 at an industrial plant." A facility classified as Standard Industrial Classification 14 is considered to be engaging in "industrial activity" for purposes of paragraph (b)(14)(iii).

9. The Iowa Department of Natural Resources (IDNR) is the state agency with authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The IDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. 3 on October 1, 2007. The permit governs storm water discharges associated with industrial activity for asphalt plants, concrete batch plants, crushing plants and construction sand and gravel facilities.

#### Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility engaged in the operation of an asphalt plant, concrete batch plant, crushing plants and/or construction sand and gravel facility known as River Products Company, Inc., Conklin Quarry, located at 3273 Dubuque Street NE, Iowa City, Iowa (the Site) with a SIC code of 1422.

13. Storm water, snow melt, surface drainage and runoff water leave Respondent's facility and flow into the Muddy Creek and Iowa 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. The Site has “storm water discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharges pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Storm water runoff from Respondent’s industrial activity 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).

18. 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.

19. On or about October 24, 2007, Respondent resubmitted a Notice of Intent (NOI) for coverage under Iowa General Permit No. 3.

20. Permit No. 1159-0955 for the rock crushing, screening, and processing plant was reissued to Respondent and will expire on October 1, 2012.

21. On August 27 and 28, 2009, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 318(a). The purpose of the inspection was to evaluate compliance with the CWA.

#### Findings of Violation

##### **Failure to Install Best Management Practices**

22. The facts stated in paragraphs 11 through 21 above are herein incorporated.

23. General Permit No. 3, Part III, Section C. Storm Water Pollution Plans requires that the plan identify potential sources of pollution which may reasonably be expected to effect the quality of storm water discharges associated with industrial activity from the facility. The plan shall identify and ensure implementation of practices which will be used to reduce pollutants in storm water discharges.

24. EPA’s inspection on August 27 and 28, 2009, revealed an outfall on the east side of the quarry near the access road leading to Dubuque Street without any management practices in place to prevent storm water runoff. Water was flowing from this area, around a berm to a woodland area, then to Muddy Creek before entering the Iowa River. The SWPPP did not describe best management practices (BMPs) for the area and BMPs were not present.

25. EPA's inspection on August 27 and 28, 2009, revealed an outfall near the facility's explosive magazine. Water was flowing down a hill through a vegetative filter to the Iowa River. The SWPPP did not describe BMPs and maintenance for the washout area. BMPs were not present.

### **Inadequate SWPPP and Failure to Update the SWPPP**

26. General Permit No. 3, Part III.C.4.B. states, "Each facility covered by this permit shall develop a description of stormwater management controls appropriate to the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. . . ."

27. The SWPPP available for review during the inspection contained a list of the non-structural controls and practices but did not contain documentation that the controls had been implemented.

28. General Permit No. 3, Part III.C.4.A. "Description of Potential Pollutant Sources" states, "Each plan shall provide a description of potential sources which may be reasonably expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include at a minimum: A.(1). a site map showing an outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and each surface water body."

29. The SWPPP available for review during the inspection did not describe the outfall on the east side of the quarry or the outfall near the facility's explosive magazine.

30. General Permit No. 3, Part III C. 4.B.(8) "Employee Training," states that employee training programs shall inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training."

31. The SWPPP available for review during the inspection did not identify periodic dates for training that had been or would be conducted.

32. General Permit No. 3, Part III.C.4.B.(7) "Sediment and Erosion Prevention" states, "The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion."

33. The SWPPP available for review during the inspection did not address areas on the site which have a high potential for erosion nor did it identify measures to limit erosion. The inspector observed areas on the site that have runoff to the Muddy Creek and the Iowa River. These areas should have been addressed in the SWPPP.

34. The SWPPP failures identified above are violations of the permit held by the Respondent and of the CWA.

#### Order For Compliance

35. Based on the Factual Background 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 paragraphs 36 through 38.

36. Within thirty (30) days of the Effective Date, as defined in Paragraph 46 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit. A report describing the steps taken to achieve compliance with the permits shall be submitted in accordance with Paragraphs 40 and 41, below by the thirtieth (30<sup>th</sup>) day following the effective date of the Order.

37. Within 45 days of the Effective Date as defined in Paragraph 46, herein, Respondent shall thoroughly revise the SWPPPs for each permit. A copy of the revised SWPPPs shall be submitted in accordance with Paragraphs 40 and 41, below.

38. From the Effective Date, as defined in Paragraph 46 herein, until terminated by EPA, the Respondent shall submit annually to EPA, with a copy to IDNR, all monitoring and sampling information conducted required by General Permit No. 3, during the year. Copies of the monitoring and sampling conducted shall be submitted in accordance with Paragraphs 40 and 41, below.

#### **Certification**

39. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

*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.*

## **Submissions**

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

Mr. Raju Kakarlapudi  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

41. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Mr. Joe Sanfilippo  
Iowa Department of Natural Resources  
909 W Main Street, Suite 4  
Manchester, Iowa 52057.

## **General Provisions**

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

42. 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.

43. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Section 309(b), (c), (d) or (g) of the Act, 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**

44. 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**

45. 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.

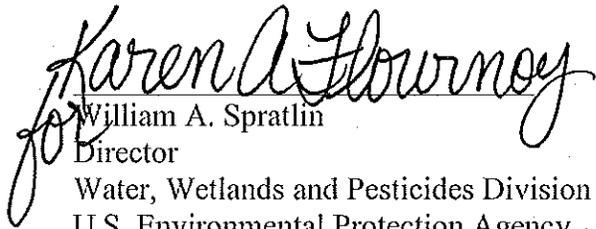
#### Effective Date

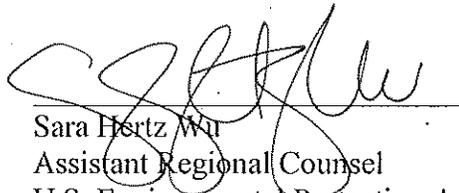
46. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

#### Termination

47. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 29th day of January, 2010.

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

  
Sara Hertz Wu  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
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 Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

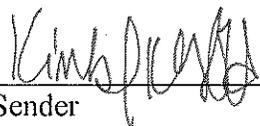
I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

River Products Company, Inc.  
3273 Dubuque Street  
Iowa City, Iowa 52244; and

Mr. Joe Sanfilippo  
Iowa Department of Natural Resources  
909 West Main Street, Suite 4  
Manchester, Iowa 52057.

**FEB 01 2010**

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Date

  
\_\_\_\_\_  
Sender