

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0059
Coffeyville Resources Nitrogen)	
Fertilizers, LLC)	
Coffeyville, Kansas)	
)	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 Coffeyville Resources Nitrogen Fertilizers, LLC ("Respondent" or "CRNF"), a limited liability company under the laws of the State of Delaware and licensed to do business in Kansas. Respondent is the owner and/or operator of a facility located within the corporate boundary of the City of Coffeyville, Montgomery County, Kansas.

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 alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System ("NPDES") permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for CRNF 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, 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 in accordance with the terms of a 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.

Stormwater

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 “storm water 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 2873 – Nitrogenous Fertilizers and 2813 – Industrial Gasses. *See* 40 C.F.R. § 122.26(b)(14)(ii).

12. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity ("General Permit") on September 1, 2006, which governs stormwater discharges associated with industrial activity for categories of facilities generally involved in materials handling, manufacturing, transportation, or production. KDHE reissued the General Permit in 2011, which is effective from November 1, 2011, through October 31, 2016.

14. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent ("NOI") to KDHE.

15. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP must contain certain items which are specified in the General Permit, and the SWPPP must specify the Best Management Practices ("BMPs") (structural, non-structural, and managerial/administrative) to be employed and what controls will be implemented to minimize the contamination of stormwater runoff associated with industrial activity from the site.

EPA's General Allegations

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

17. Respondent is and was at all times relevant to this action the owner and operator of a nitrogen fertilizer facility ("facility" or "site"), operating under SIC codes 2873 and 2813, comprised of approximately 47 acres located at 701 East Martin Street in Coffeyville, Kansas 67337.

18. Stormwater, snow melt, surface drainage and runoff water leave Respondent's site and discharge through various drainage pathways to the Verdigris River.

19. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The site 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 the CWA, 33 U.S.C. § 1362(14).

21. The Verdigris River and its tributaries identified in Paragraph 18, above, are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. Stormwater runoff from Respondent's industrial activity at the above referenced site 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).

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

24. Respondent filed a NOI with KDHE seeking coverage under the General Permit on or about March 9, 2007.

25. KDHE issued NPDES General Permit No. KSR000238 (“Permit”) to CRNF on March 12, 2007. KDHE re-issued the Permit to Respondent; the most recent Permit was effective November 1, 2011, and will expire on October 31, 2016. The Permit governs Respondent’s stormwater discharges that are associated with industrial activity at the site.

26. On March 16 and 17, 2015, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondents’ site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondents’ compliance with its Permit and the CWA.

27. During the Inspection, the EPA inspector reviewed and obtained copies of Respondent’s documents related to the Permit, including but not limited to the facility’s SWPPP dated May 20, 2013 (hereafter “2013 SWPPP”), employee SWPPP training records, and monthly and annual inspection records. The EPA inspector also toured the facility and photographed various stormwater-related areas.

28. A Notice of Potential Violation (“NOPV”) was issued by the EPA inspector at the conclusion of the Inspection. A copy of the Inspection report was sent to Respondent by letter dated July 13, 2015, which identified potential violations including those described below.

29. In letters to the EPA dated March 26, 2015 and June 16, 2016, Respondent described corrective actions implemented by Respondent to address the Inspection’s findings.

EPA’s Findings

Count 1

Failure to Implement Measures and Controls

30. The facts stated in Paragraphs 1 through 29 above are re-alleged and incorporated herein by reference.

31. Sections 2.2 and 2.4.3 of the Respondent’s Permit require the Respondent to review, evaluate, select, install, utilize, operate and maintain best management practices (“BMPs”) in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility. At a minimum, Respondent’s plan for BMPs must contain a listing and description of managerial/administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility, including a schedule, if necessary, for implementing such controls. Specific measures and controls identified in the permit include, but are not limited to, good housekeeping, preventative maintenance, sediment and erosion controls and management of runoff.



32. Section 4.1 of Respondent's Permit requires proper operation and maintenance, at all times, of all facilities and systems of treatment and control which are installed or used to achieve compliance with the requirements of the Permit.

33. During the EPA Inspection, the inspector observed that the Respondent had failed to implement and/or operate and maintain stormwater measures and controls to reduce the amounts of pollutants in stormwater, including the following:

- a. Barrels and totes of chemicals, used batteries and metal parts stored outside and exposed to the element and without containment;
- b. Floatables and other pollutants and debris in stormwater ditches throughout the facility, including plastic bottles, trash, used gloves and dark stained areas in the stormwater ditches and catchments basins, potentially indications of fugitive coke; and
- c. Inadequate containment and/or lack of management of the coke storage piles, including limited freeboard in the secondary containment around the piles, evidence of overflow of contaminated water from the containment area to the access road on the south side of the coke storage area, visible signs of erosion and evidence of overflow of contaminated water on the north side of the slag storage area to the stormwater channel, and evidence of dark staining in water standing in the stormwater drainage channel leading east to the gated outfall at the Verdigris River.

34. Respondent's alleged failure to properly operate and maintain adequate measures and controls to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility is a violation of the NPDES 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).

**Count 2
Failure to Conduct Visual Stormwater Monitoring**

35. The facts stated in Paragraphs 1 through 34 above are re-alleged and incorporated herein by reference.

36. Section 2.4.5 of Respondent's Permit states that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

37. Sections 4.4 and 5.6 of Respondent's 2013 SWPPP address the expectations and procedures for facility visual inspections, as required by the Permit, including visual inspections of discharge areas at the facility, as described in Section 4.3 of the 2013 SWPPP.



38. Evaluation of the facility and review of documentation provided by the Respondent to the EPA inspector revealed that the facility did not visually inspect stormwater from the following stormwater discharge areas or outfalls:

- a. Stormwater runoff from the CRNF property exits CRNF and enters the Process Wastewater Collection System, described in the 2013 SWPPP, section 4.3.1, page 7. This stormwater is discharged to the City of Coffeyville POTW and is permitted by the City under Discharge Permit No. 0012;
- b. Stormwater runoff from the CRNF property exits CRNF and enters the Stormwater Collection Ditch, described in the 2013 SWPPP, section 4.3.2, page 8. After stormwater enters the Stormwater Collection Ditch, it is discharged through a manually operated discharge gate and into the Verdigris River;
- c. Stormwater runoff from the CRNF property exits CRNF property and enters the City of Coffeyville stormwater system, described in the 2013 SWPPP, section 4.3.3, page 8. There are at least six stormwater inlets where stormwater discharges from the CRNF property to the City's stormwater system; and
- d. Stormwater runoff from the CRNF property exits CRNF property and is pumped to a stormwater collection system for the adjacent Coffeyville Resources Refining and Marketing, LLC ("Refinery") facility, as described in the 2013 SWPPP, section 4.3.4, page 8. After stormwater enters the Refinery's stormwater collection system, it is discharged through the Refinery's Outfall 001D1.

39. During the EPA Inspection, the inspector noted that the facility failed to conduct or document the results of a visual examination of stormwater quality since the permit was issued in 2011.

40. Respondent's alleged failure to conduct visual monitoring of stormwater discharge quality is a violation of the NPDES 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).

Reasonable Time to Achieve Compliance

41. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that three (3) months is a reasonable time for Respondent to achieve compliance with its Permit and install and implement all appropriate stormwater controls.

Order for Compliance on Consent

42. 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.



43. In accordance with this Order, the Respondent shall immediately cease all discharges, except discharges of stormwater in compliance with the Permit, and shall take all necessary actions to comply with the conditions and limitations of its Permit.

44. By no later than December 31, 2016, Respondent shall provide a report to the EPA, with a copy to KDHE, that includes:

- a. A copy of the results from each visual monitoring event that has been conducted since the March 2015 EPA Inspection;
- b. A copy of reports for each monthly site inspection conducted since the March 2015 EPA Inspection;
- c. A copy of the report generated from any annual comprehensive site evaluation that has been conducted since the March 2015 EPA Inspection;
- d. A description of all actions taken and all structural controls installed and non-structural controls implemented since the March 2015 EPA Inspection;
- e. A description of all additional actions, structural controls and non-structural controls planned; and
- f. If Respondent has updated, amended, revised or modified its SWPPP, a copy of the updated, amended, revised or modified SWPPP and its attachments.

45. No later than June 30 and December 31, 2017, Respondent shall provide to the EPA, with a copy to KDHE, a report containing, at a minimum, the following information for the previous six (6) months:

- a. A copy of the report for each visual monitoring event, quarterly site inspection and annual comprehensive site evaluation that has been conducted;
- b. A description of all employee training that has been conducted; and
- c. A detailed description of all actions, structural controls and non-structural controls that have been implemented or that are planned to ensure the Facility remains in full compliance with all conditions and limitations of the Permit, including any updates or amendments to the SWPPP.



Reports/Submissions

46. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 49 below, shall be submitted by electronic mail to:

draper.seth@epa.gov
Seth Draper, or his successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219

47. 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.

48. All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Jaime Gaggero, Director
Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

49. Each submission requirement of this Order shall contain the following certification signed by an authorized person, 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

50. 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.

51. 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

52. 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

53. 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

54. 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.


Termination

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

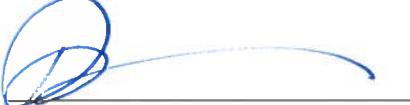


For the Complainant, U.S. Environmental Protection Agency:

Issued this 16th day of November 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel



For the Respondent, Coffeyville Resources Nitrogen Fertilizers, LLC:

 _____ 11/14/16 _____
Signature Date

Neal F. Barkley _____
Name

Vice President & Fertilizer Facility Manager _____
Title



Certificate of Service

I certify that on the date noted below the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent were delivered 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 sent a copy of the foregoing Order for Compliance on Consent by certified mail, return receipt requested, to:

Neal E. Barkley, Vice President and Fertilizer Facility Manager
Coffeyville Resources Nitrogen Fertilizers, LLC
701 East Martin Street
Coffeyville, Kansas 67337

And by first class mail to:

Jaime Gaggero, Director
Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

11/17/2016
Date

[Signature]
Signature