

FILED

September 24, 2025

8:44AM

U.S. EPA REGION 7
HEARING CLERK

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Bayer Construction Company, Inc.,) Docket No. CWA-07-2025-0239
)
Respondent) **Administrative Order 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 Administrative Order on Consent (“Order”) is issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3) which provides that whenever, on the basis of any information available, the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the CWA, in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.

2. 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 Enforcement and Compliance Assurance Division with the concurrence of the Regional Counsel.

3. Respondent in this case is Bayer Construction Company, Inc., (“Respondent” or “Bayer”).

4. It is the Parties’ intent through entering into this Order to address the Respondent’s noncompliance with the terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permits. As set forth in this Order, the Parties have reached agreement regarding the timeframes for Bayer to attain compliance with the CWA and its NPDES permits.

General Provisions

5. For this proceeding only, Respondent admits each jurisdictional allegation set forth in this Order.

6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.

7. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.

8. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this Order, including any costs related to resolution of any dispute arising regarding this Order.

9. This Order does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Order does not constitute a waiver, suspension, or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

10. Respondent waives 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, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

11. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind the party and consents to personal service by electronic mail.

12. By signing this Order, Respondent acknowledges that this Order may be available to the public and represents that, to the best of Respondent's knowledge and belief, this Order does not contain any confidential business information or personally identifiable information from Respondent.

13. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA, regarding matters relevant to this Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

14. Terms used in this Order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

Statutory and Regulatory Framework

15. 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 an NPDES permit issued pursuant to that Section.

16. 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.

17. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” as “the waters of the United States, including the territorial seas.”

18. 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 Section 402 of the CWA.

19. 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.

20. 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.

21. In part, 40 C.F.R. § 122.26(b)(14)(iii) defines “industrial activity” as including “Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry).”

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

Factual Background

23. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and includes but is not limited to an individual, corporation, and partnership.

24. At all times relevant to this action, Respondent owned, operated, or otherwise controlled two facilities: Kansas Falls North Quarry, Section 25, Township 12S, Range 4E of Geary County, Kansas, and Kansas Falls South Quarry, NE ¼ of Section 36, Township 12S, Range 4E of Dickinson County, Kansas. The North Quarry includes a limestone quarry and crushing operation with wash water flowing to a series of settling ponds. The South Quarry includes a limestone quarry and crushing operation only. Both facilities operate under the Standard Industrial Classification Code 1422 – Crushed and Broken Limestone.

25. Process wastewater from washing activities at the North Quarry, as well as stormwater, snow melt, surface drainage, and runoff water leaves Respondent's North and South Quarries and discharge to the Smoky Hill River, a perennial water body with year-round flow. The Smoky Hill River flows approximately 11 miles to the Kansas River, which is a "traditionally navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

26. The runoff and drainage from Respondent's facilities is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

27. Both facilities have "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14) and process wastewater discharges and stormwater discharges are each a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

28. Process wastewater discharges and stormwater from these facilities contain "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

29. The Smoky Hill River is a "waters of the United States" as is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

30. Process wastewater discharge from the North Quarry and stormwater runoff from Respondent's industrial activity at both facilities result in the addition of pollutants from point sources to navigable waters and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

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

32. KDHE issued Permit I- SH04-PO02 (Kansas Falls – North Quarry # KS0001813) and I- SH04-PO07 (Kansas Falls – South Quarry #KS0097756) for stormwater discharges on May 1, 2020, and July 1, 2020, respectively. Both permits expired on December 31, 2024. Renewal requests were submitted on October 1, 2024.

33. Respondent operated under the referenced Permits at all times relevant to this Order.

34. On February 26, 2025, EPA performed Industrial Stormwater Compliance Evaluation Inspections at both the Kansas Falls North and South Quarries under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its NPDES permits and the CWA. During this inspections, EPA's Inspector identified several violations of the Respondent's NPDES permits.

Findings of Violation
Kansas Falls -North Quarry

35. The paragraphs above are restated and herein incorporated.

Count 1
Effluent Limitations and Monitoring Requirements

36. NPDES Permit #KS0001813, Part A., discharges shall be controlled, limited, and monitored by the permittee as specified. There shall be no discharge of floating solids or visible foam in other than trace amounts.

37. NPDES Permit #KS0001813, Part A., specific limitations for Outfall 001A1 – Treated Wash Water, Pit water, and Stormwater Runoff are listed below.

Parameter	Final Effluent Limitations	Measurement Frequency	Sample Type
Total Suspended Solids, Monthly Average	30 mg/L	Quarterly	Grab
Total Suspended Solids, Daily Maximum	45 mg/L	Quarterly	Grab
Sulfate	Monitor Only	Quarterly	Grab

38. NPDES Permit #KS0001813, Part A., states the permittee shall, at a minimum visually inspect the outfall(s) and receiving stream(s) in May and September to ensure compliance with the above Water Quality Standards. The permittee shall maintain a log documenting the results of any visual inspections performed and shall provide the log to KDHE staff for review upon request.

39. The EPA inspection identified discharge monitoring reports with total suspended solids exceedances in daily maximum and monthly average limits during the period ending June 30, 2021, and the monthly average for total suspended solids during the period ending December 31, 2024.

40. At the time of the EPA inspection the facility did not provide records of visual monitoring in the last five years of the outfalls and receiving streams to ensure compliance with the water quality standards.

41. Respondent's effluent exceedances and failure to conduct and document visual site inspections is a violation of the terms and conditions of Respondent's NPDES permit and the CWA.

Count 2

Failure to Comply with Standard Conditions

42. NPDES Permit #KS0001813 Part B. requires compliance with the Standard Conditions dated March 1, 2018.

43. NPDES Permit #KS0001813 Standard Condition #6 states the permittee shall always properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law.

44. NPDES Permit #KS0001813 Standard Condition #20 states nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under 33 U.S.C. Section 1321 or KSA 65-164 (Oil and Hazardous Substance Liability).

45. EPA's inspection identified aboveground storage tanks in secondary containment with valves placed in the open position.

46. Respondent's identified failures to comply with the Standard Conditions are violations of the terms and conditions of Respondent's NPDES permit and the CWA.

Count 3

Failure to Comply with Supplemental Conditions

47. NPDES Permit #KS0001813 Part D.5. states the permittee shall develop and implement procedures to minimize the discharge of silt from this site. Procedures shall provide for, but not be limited to, methods to minimize erosion of stockpiles on-site and minimize the amount of solids in the water discharged from the quarry pit. The written procedures shall be available for KDHE staff review, upon request.

48. NPDES Permit #KS0001813 Part D.7. states the permittee shall implement the SWP2 Plan dated March 7, 2008, or a more recent, revised plan submitted to KDHE. This plan shall be re-evaluated and modified in a timely manner, but in no case more than 90 days after:

- (1) a change in the design, construction, operation or maintenance of the facility that would have a significant effect on the potential for discharge of pollutants from the facility's outfalls;
- (2) deficiencies are found in the Stormwater Pollution Prevention ("SWP2") Plan or any BMPs, discovered during the site compliance evaluation or during other on-site inspections conducted by KDHE;
- (3) a visual inspection of the site indicates the plan appears to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the SWP2 Plan;
- (4) an outfall is either added or eliminated.

49. EPA's inspection identified the following areas with missing erosion control measures or deficiencies in the SWP2 at Respondent's facility:

- a. material stockpiles
- b. waste and debris piles
- c. basin embankment erosion
- d. perimeter berm erosion
- e. settling ponds
- f. missing descriptions of erosion and sediment controls
- g. missing identification and maintenance procedures for structural controls
- h. missing identification of sewage and chemical pollutant exposures
- i. inaccurate and incomplete site maps

50. Respondent's failure to comply with the supplemental conditions are violations of the terms and conditions of Respondent's NPDES permit and the CWA.

Kansas Falls- South Quarry

51. The paragraphs above are restated and herein incorporated.

Count 4

Effluent Limitations and Monitoring Requirements

52. NPDES Permit #KS00977563 Part A. discharges shall be controlled, limited, and monitored by the permittee as specified. There shall be no discharge of floating solids or visible foam in other than trace amounts.

53. NPDES Permit # KS00977563 Part A. states the permittee shall, at a minimum visually inspect the outfall(s) and receiving stream(s) in May and September to ensure compliance with the above Water Quality Standards. The permittee shall maintain a log documenting the results of any visual inspections performed and shall provide the log to KDHE staff for review upon request.

54. At the time of the EPA inspection the facility did not provide records of visual monitoring in the last five years of the outfalls and receiving streams to ensure compliance with the water quality standards.

55. Respondent's failure to conduct and document visual site inspections is a violation of the terms and conditions of Respondent's NPDES permit and the CWA.

Count 5

Failure to Comply with Standard Conditions

56. NPDES Permit # KS00977563 Part B. requires compliance with the Standard Conditions dated March 1, 2018.

57. NPDES Permit # KS00977563 Standard Conditions #6 states the permittee shall always properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law

58. NPDES Permit # KS00977563 Standard Conditions #20 states nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under 33 U.S.C. Section 1321 or KSA 65-164 (Oil and Hazardous Substance Liability).

59. EPA's inspection identified aboveground storage tanks in secondary containment with valves placed in the open position.

60. Respondent's identified failures to comply with the Standard Conditions are violations of the terms and conditions of Respondent's NPDES permit and the CWA.

Count 6

Failure to Comply with Supplemental Conditions

61. NPDES Permit # KS00977563 Part D.5. states the permittee shall develop and implement procedures to minimize the discharge of silt from this site. Procedures shall provide for, but not be limited to, methods to minimize erosion of stockpiles on-site and minimize the amount of solids in the water discharged from the quarry pit. The written procedures shall be available for KDHE staff review, upon request.

62. NPDES Permit # KS00977563 Part D.7. states the permittee shall implement the SWP2 Plan dated March 7, 2008, or a more recent, revised plan submitted to KDHE. This plan shall be re-evaluated and modified in a timely manner, but in no case more than 90 days after:

- (1) a change in the design, construction, operation or maintenance of the facility that would have a significant effect on the potential for discharge of pollutants from the facility's outfalls;
- (2) deficiencies are found in the SWP2 Plan or any BMPs, discovered during the site compliance evaluation or during other on-site inspections conducted by KDHE;
- (3) a visual inspection of the site indicates the plan appears to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the SWP2 Plan;
- (4) an outfall is either added or eliminated.

63. EPA's inspection identified the following areas with missing erosion control measures or deficiencies in the SWP2 at Respondent's facility:

- a. material stockpiles
- b. waste and debris piles
- c. missing descriptions of erosion and sediment controls
- d. missing identification and maintenance procedures for structural controls

- e. missing identification of sewage and chemical pollutant exposures
- f. inaccurate and incomplete site maps

64. Respondent's failure to comply with the supplemental conditions are violations of the terms and conditions of Respondent's NPDES permit and the CWA.

Order for Compliance

Based on the factual background and findings of violation set forth above, and pursuant to the authority of Sections 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent AGREES and is hereby ORDERED to take the actions described below.

65. Within thirty (30) days of the Effective Date, Respondent shall submit to EPA a Compliance Plan that includes:

- a. A description of actions taken or to be taken to correct the deficiencies and eliminate and prevent recurrence of the alleged violations identified in this Order, and to come into compliance with all applicable requirements of its Permit, including, as necessary, revisions to the SWPPP.
- b. A schedule, subject to EPA approval, for implementation of each of the proposed actions.

Reports/Submissions

66. *Quarterly Reporting.* In addition to the report required above, Respondent shall submit quarterly reports describing the actions it has taken to ensure continued compliance with the terms of its Permit and this Order. These reports are due beginning three (3) months from the Effective Date and every three (3) months thereafter until the Order is terminated. Each report shall include, at a minimum:

- a. A description of implementation and/or revision of the SWPPP during the previous three (3) month period;
- b. A description of work and other actions taken to construct structural controls and/or implement other controls, in the previous three (3) month period; and
- c. Copies of all relevant documentation regarding the activities described pursuant to subparagraphs (a) and (b), including, but not limited to, inspection reports and monitoring records, formal and informal enforcement actions, etc.

67. *Submittals.* All documents and other information required to be submitted to EPA by this Order shall be submitted by electronic mail to:

Erin Kleffner
kleffner.erin@epa.gov
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

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.

All documents required to be submitted pursuant to this Order shall also be submitted to KDHE to the address provided below:

Shelly Shores, Section Chief
Wastewater Permitting & Compliance
Bureau of Water
Kansas Department of Health and Environment
Shelly.shores@ks.gov

68. After review of the schedule required by paragraph 65 of this Order, EPA may approve or disapprove the schedule, in whole or in part. EPA shall approve the schedule or any portion so long as the submission fulfills the requirement under this Order. Upon EPA approval, the schedule by Respondent is incorporated and enforceable as part of this Order. Respondent shall implement the Compliance Plan required by paragraph 65 according to the approved schedule.

69. If EPA disapproves the schedule, EPA will notify Respondent in writing, which may include notice by email, and EPA may require Respondent to supplement or modify its schedule. Within 30 days following receipt of written notice of EPA's disapproval, Respondent must submit a corrected schedule to EPA for approval. If Respondent's modified schedule is disapproved in whole or in part by EPA, EPA may require Respondent to correct the deficiencies or EPA may determine that the schedule fails to meet the requirements of this Order.

70. Notwithstanding the receipt of a notice of disapproval pursuant to the paragraph above, Respondent must proceed to take all actions and provide all submissions required under this Order, including any actions required under any non-deficient portion(s) of its submission if such action can be undertaken independent of the deficient portion of Respondent's submission.

Effect of Compliance with the Terms of this Order for Compliance

71. 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.

72. Failure to comply with this Order may subject Respondent to penalties up to \$68,445 per day for each violation pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19.

Access and Requests for Information

73. 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 309 of the CWA, 33 U.S.C. § 1319 and/or any other authority.

Severability

74. 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.

Modifications

75. Any request to modify the terms of, or parties to, this Order shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this Order shall not relieve Respondent of any obligation under this Order and shall have no effect on EPA's statutory or regulatory authority to enforce the terms of this Order, in its sole and unreviewable discretion. All deadlines for performance under this Order may be extended upon written approval by EPA, at its sole discretion, without formal amendment to the Order.

Effective Date

76. 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

77. Upon EPA's determination that Respondent has completed all tasks required pursuant to this Order, Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this Order. Such certification and request shall include:

- a. a certification that Respondent has maintained compliance with this Order for the term of this Order; and
- b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with this Order.

78. If, following review of any Certification of Compliance and Request for Termination of this Order, the EPA determines that any requirement has not been completed and implemented in accordance with this Order, the EPA will notify Respondent in writing, provide a written summary of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, EPA may also require Respondent to submit a revised Certification of Compliance and Request for Termination of this Order.

79. If, following review of any Certification of Compliance and Request for Termination of this Order, EPA agrees that Respondent has adequately complied with all requirements of this Order, then EPA may, in its unreviewable discretion, provide written notification of termination of this Order.

80. Notwithstanding any of the above, the EPA may terminate this order upon written notice issued by an authorized representative of the EPA.

Issued this _____ day of _____, 2025.

David Cozad

Director

Enforcement and Compliance Assurance Division

KRISTINA

GONZALES

Date: 2025.09.23

07:20:37 -05'00'

Kristina Gonzales

Office of Regional Counsel

For the Respondent, Bayer Construction Company, Inc.:

Stan Hambright 9/22/25
Signature Date

Stan Hambright
Name

VP - HR/safety
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I sent a copy of the final filed Order by electronic mail, return receipt requested, to the following:

For the State:

William Carr
Bureau Director
Bureau of Water
Kansas Department of Health and Environment
William.carr@ks.gov

Shelly Shores, Section Chief
Wastewater Permitting & Compliance
Bureau of Water
Kansas Department of Health and Environment
Shelly.shores@ks.gov

For the Respondent:

Stan Hambright, SHRM-CP
Vice President Human Resources/Safety
Bayer Construction Company, Inc.
stanh@bayerconst.com

For the Complainant

Kristina Gonzales
Gonzales.kristina@epa.gov

Date

Signature