



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Ref: 8ENF-W-NP

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Mike Newton  
Operations Manager  
Fisher Sand and Gravel Company  
Box 1246  
Glendive, Montana 59330

Re: Fisher Sand and Gravel Company – Glendive Site  
Administrative Order on Consent, Docket No. CWA-08-2018-0006

Dear Mr. Newton:

This letter concerns two deliverables submitted by Fisher Sand and Gravel (Fisher S&G) to the EPA and Montana Department of Environmental Quality (MDEQ) on April 30, and May 14, 2018, pursuant to the above referenced administrative order on consent (AOC) concerning the Glendive Site (the Facility). The EPA has reviewed these deliverables and believes that they do not meet the submission requirements of the AOC. The following details explain the deficiencies found with each deliverable.

Upon notice of your receipt of this letter, the EPA will contact you by phone to discuss your intent to correct the deficiencies documented below, to discuss any information you may have to indicate the deliverables in fact do satisfy the information required to be submitted by the AOC, and to answer any questions you might have about this letter.

Deficiencies

1. The first deliverable of concern from Fisher S&G was submitted May 14, 2018, pursuant to several compliance requirements in section VI of the AOC. The deliverable failed to meet the following requirements of the AOC and the 2018 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the General Permit). For each deficiency below, please note the corresponding corrective action you are being asked to implement to fully satisfy the AOC and General Permit requirements.
  - a. The NOI was incomplete and inaccurate.
    - i. Paragraph 89 of the AOC: The submitted Notice of Intent (NOI) for coverage under the General Permit was filled out and indicated applicability of General Permit requirements for industrial sector E (SIC code 3241, as noted on the NOI) but not industrial sector J. Paragraph 89 requires Fisher S&G to comply with the requirements for both sectors. As noted in EPA and MDEQ inspection reports for the Facility and reflected in paragraph 8 of the AOC, the Facility's operations are

characterized by SIC codes 1442 and 3273, which correspond to subsectors E2 – Concrete, Gypsum and Plaster Products and J1 – Construction Sand and Gravel, respectively.

- ii. Fisher S&G also stated in the NOI that monitoring is not required, which is contrary to the requirements of the General Permit. Part 2.4.1 requires permittees to monitor for benchmark parameters for the applicable industrial sectors. Parts 3.4.5.4 and 3.4.10.7 establish benchmark parameters for subsectors E2 and J1, respectively.

*Corrective Action:* Submit a modified NOI indicating the appropriate industry sectors and monitoring requirements.

- b. Paragraph 90: The submitted Storm Water Pollution Prevention Plan (SWPPP) narrative is deficient, because it lacks the following items required by the General Permit (sections of which are cited below), some of which were listed in the AOC as missing items:
  - i. Identification of a "SWPPP Administrator" and a description of responsibilities for any team members other than Mike Newton (part 3.1.3)
  - ii. The date of any evaluation of non-stormwater discharges (part 3.1.6.3)
  - iii. Runoff coefficients for areas contributing to each outfall (part 3.1.11)
  - iv. Benchmark control values (e.g., pollutant concentrations) from the General Permit that correspond to the Facility's industrial categorization under subsectors E2 and J1.

*Corrective Action:* Correct the above deficiencies in the SWPPP narrative and submit a revised SWPPP.

- c. Paragraph 90: The submitted SWPPP map is deficient, because it does not show the following items required by part 3.1.5 of the General Permit:
  - i. The location of concrete walls used as a pollution control measure
  - ii. The location of stormwater conveyances including swales, pipes and ditches

*Corrective Action:* Correct the above deficiencies in the SWPPP map and submit a revised SWPPP.

- d. Paragraph 92: The submitted discharge monitoring report (DMR) for the period April-June 2016 had data from a sample collected May 16, 2016, at outfall 001 showing results of 1030 mg/L total suspended solids and 30.9 mg/L total iron. The results for both parameters were four times the rolling average benchmark concentration, and no sample results for the Facility have been submitted since that period. Part 2.4.4 of the General Permit states:

If the rolling average of the 4 most recent quarterly monitoring values for any parameter exceeds an applicable benchmark, the permittee must review the selection, design, installation, implementation, and maintenance of the control measures to determine if modifications are necessary to meet the effluent limits in this permit per part 2.8.2. If less than 4 benchmark samples have been taken, but the results are such that an exceedance of the 4-

quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than 4 times the benchmark level) this is considered a benchmark exceedance, triggering the review in part 2.8.2.

Part 2.8.2 of the General Permit states that the permittee must review “the selection, design, installation, implementation, and maintenance of the control measures to determine if modifications are necessary to meet the effluent limits in this permit.” Part 2.8.2 further states the following:

Upon review, the permittee must either

- make the necessary modifications until the permittee has completed 4 quarters of monitoring for which the average does not exceed the benchmark;
- make a determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the technology-based effluent limits or are necessary to meet the water-quality-based effluent limitations in part 2 of this permit. Rationale must be documented for these conclusions and reported. These conclusions are subject to Department review; or
- make a determination that naturally occurring background pollutant levels are attributable to the benchmark exceedance in accordance with part 2.4.5. Background sampling and rationale must be documented for these conclusions and reported.

*Corrective Action:* In response to the benchmark exceedances documented above for May 2016, conduct and document a review of control measures at the Facility in accordance with part 2.8.2 of the General Permit. Then, either modify control measures and document those modifications or document the rationale for a determination that modifications are not necessary. Submit a copy of this documentation.

- e. Paragraph 92: The report for a storm event inspection on June 13, 2017, indicated “Single berm Blow out. Going to fix w/ dirt berm and Rip Rap... Will need to repair the single berm in outfall 2. With rip rap and dirt.” The next storm event inspection conducted July 19, 2017, indicated that “water broke through west side of berm...replace berm with rip rap.” The original discovery on June 13, 2017, of a failed control measure constituted a condition warranting corrective action with follow-up documentation in accordance with part 2.8.1 of the General Permit, but the records submitted in this deliverable did not include any such documentation. Furthermore, this same failed control measure remained in place more than a month later after a similar storm event. Part 2.8.3.1 of the General Permit states the following:

Upon discovery of any condition requiring corrective action, the permittee must take all reasonable steps necessary to minimize or prevent the discharge of pollutants until final corrective actions are

determined and implemented. The permittee must take these reasonable steps on the same day of the discovery or within 24 hours of making such discovery.

Part 2.8.3.2 of the General Permit provides that an additional 14 calendar days beyond initial discovery may be taken to correct the failed control measure if warranted, and part 2.8.3.5 requires documentation of any corrective actions beyond the 14-day period. However, no such documentation of actions taken with corresponding timeframes and dates was provided by Fisher S&G in this deliverable.

*Corrective Action:* Provide documentation, including photographs, to describe the condition of the berm and actions taken by Fisher to correct the berm's deficiencies. In response to any future conditions requiring review and revision of control measures in accordance with part 2.8.1 of the General Permit, implement and document corrective actions as described in the General Permit conditions above.

- f. Paragraph 95: Documentation of changes to control measures included only photographs with no captions or accompanying narrative. The EPA was able to associate these photographs with only a limited number of control measures needing modification. It was not possible to determine whether the following instances of absent or improper control measures cited in paragraphs 51 and 52 of the AOC have been corrected:
- i. 51(a) maintenance of the concrete washout BMP
  - ii. 51(b) maintenance of the gravel berm BMPs
  - iii. 51(c) clean up of the waste oil tank with stains on the tank and on the ground, as snow covered the ground in the photos
  - iv. 51(d) presence of a plastic barrel floating in the water source pond
  - v. 51(e) presence of hardened concrete on a bank of Upper Seven Mile Creek
  - vi. 51(f) evidence of storm water discharges from points other than outfalls 001 and 002
  - vii. 51(g) storm water discharges from an area of hardened concrete into a tributary of Upper Seven Mile Creek
  - viii. 51(h) absence of BMPs to prevent discharges of sediment from the haul road to the tributary of Upper Seven Mile Creek
  - ix. 52(a) inconsistent use of the concrete washout by vehicle drivers
  - x. 52(b) clean up of diesel fuel on the ground outside of secondary containment structures
  - xi. 52(d) stormwater leaving the site through a grate in the parking area
  - xii. 52(e) leaking of a water pipe that allowed a discharge into the source water pond
  - xiii. 52(f) use of loose gravel to construct stormwater control berms
  - xiv. 52(g) elimination of an overflow from a former concrete washout to the source water pond

*Corrective Action:* Resubmit the photographs provided in the May 14, 2018, deliverable with captions, narrative or other descriptive information that is keyed to each of the deficiencies identified in paragraphs 51 and 52. This step will establish for the record, and enable the reader to determine, what actions were taken to correct each deficiency.

- g. Paragraph 96: Fisher S&G stated in section V.c of the SWPPP, "The inspection reports will be kept in the storm-water file." Nowhere else in the deliverable did Fisher S&G state where the stormwater file is located to verify that records are kept onsite at the Facility and that this file is accessible by all employees, contractors and other agents at the Facility. Furthermore, the information provided in section V.c of the SWPPP pertains to inspection records only. Fisher S&G did not provide any description of procedures for maintaining other types of required records and for making such records accessible to employees, contractors and other agents.

*Corrective Action:* Submit a supplemental statement describing procedures to satisfy the requirement of paragraph 96 and part 2.9 of the General Permit regarding location and accessibility of records that are required to be maintained onsite.

2. The second deliverable of concern from Fisher S&G consisted of discharge monitoring reports (DMRs) and Facility inspection reports for the first calendar quarter of 2018, submitted April 30, 2018, pursuant to paragraphs 92(b) and 93 of the AOC, respectively. The DMRs indicated no discharge for total suspended solids (TSS) and total iron but did not include any monitoring or discharge information about nitrate + nitrite nitrogen. As explained above, the Facility's operations fall under industry sector-specific requirements for sector J1 – Construction Sand & Gravel in addition to the requirements for sector E2 – Concrete, Gypsum and Plaster Products, which includes monitoring for nitrate + nitrite nitrogen in addition to TSS and total iron.

*Corrective Action:* Because Fisher S&G did not appropriately notify MDEQ of its two applicable industry sectors, Fisher S&G needs to use a corrected DMR form from MDEQ for its next quarterly submission of monitoring information. Submit a copy of the next DMR with all required monitoring information.

Within **30 days of receipt of this letter**, please submit to the EPA and MDEQ the information cited above in each corrective action, supplemental information to the deliverables identified above, and any information that may change the EPA's view of the deficiency. Please submit your response to the addresses identified in paragraphs 99 and 100 of the AOC.

Please note that any violations of the General Permit or the AOC may be subject to additional enforcement, including but not limited to penalties authorized by Section 309 of the Clean Water Act.

Thank you for your continued efforts to satisfy the compliance requirements of the AOC. If you have any questions about this matter or would like to discuss it with the EPA, please contact Michael Boeglin of my staff at 303-312-6250.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie DeJong', is positioned above the typed name.

Stephanie DeJong, Unit Chief  
NPDES Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

cc: Daniel Freeland, MDEQ  
Chad Anderson, MDEQ