



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 08 2009

Via Certified Mail:
7000 0520 0025 3711 8683
Return Receipt Requested

Eric Horton
Owner
A-Plus Materials Recycling
2710 Loomis Rd
Stockton, CA 95205

Subject: Findings of Violations and Order for Compliance
EPA Docket No. CWA-309(a)-09-004

Dear Mr. Horton:

On March 19, 2008, representatives of the U.S. Environmental Protection Agency (EPA) and the California Regional Water Quality Control Board, Central Valley Region (Regional Board) conducted a Clean Water Act compliance inspection at A-Plus Materials Recycling's Port of Stockton Facility. On July 17, 2008, EPA sent you a copy of the inspection report and requested that you install Best Management Practices (BMPs) and make revisions to the Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program Plan (Monitoring Program). On August 6, 2008, A-Plus Materials Recycling responded with a list of corrective actions it had taken. Given the unknown liquid surrounding the large concrete blocks placed around the acid wash area, it is not clear that the concrete blocks are an adequate BMP to ensure that the acid wash is not discharged in storm water runoff.

Based on the inspection and on A-Plus Materials Recycling's response, EPA today issues the enclosed Findings of Violation and Order for Compliance requiring A-Plus Materials Recycling to take specific actions to bring the Facility into compliance with the Clean Water Act, including the following:

1. Prepare a Storm Water Pollution Prevention Plan for the Facility which fully complies with California's General Industrial Activities Storm Water Permit (Industrial Permit). The SWPPP must fully describe all industrial activities, including concrete manufacturing, and describe all associated BMPs;
2. Prepare and submit a Monitoring Program that fully complies with the Industrial

Permit; and

3. Complete several additional tasks identified in the Order, within the time specified.

If you have any questions concerning this matter, please contact Ellen Blake of my staff at (415) 972-3496.

Sincerely,

Alexis Strauss, Director
Water Division

Enclosures

cc: Nova Clemenza, Central Valley Regional Water Quality Control Board
Richard Aschieris, Port of Stockton
Jeff Wingfield, Port of Stockton

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

A-Plus Materials Recycling
250 Port Road
Stockton, CA 95203-7554

)
) Docket No. CWA 309(a)-09-004
)

)
) **FINDINGS OF VIOLATION**
) **AND**
) **ORDER FOR COMPLIANCE**
)

) Proceedings under Section 308(a) and 309(a)
) of the Clean Water Act, as amended, 33
) U.S.C. Sections 1318(a), and 1319(a)
)

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

FINDINGS OF VIOLATION

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with the Act, including Section 402, 33 U.S.C. § 1342.
2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 CFR § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 CFR § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States. Pursuant to 40 CFR

§§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. Scrap Materials Recycling, Standard Industrial Classification (SIC) 5093, falls under SIC Major Group 50 and, pursuant to 40 CFR § 122.26(b)(14)(vi), is an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations authorize EPA to, inter alia, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.
6. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activity.
7. The State of California has an EPA-approved NPDES program, and issues permits, including storm water permits, through its State Water Resources Control Board (State Board) and nine Regional Water Quality Control Boards (Regional Boards). Since 1991, the State Board has adopted two successive statewide NPDES general permits for discharges of storm water associated with industrial activity. The permit that is currently effective, General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (General Permit) was adopted on April 17, 1997.
8. All facility operators seeking coverage under the General Permit must submit a notice of intent to comply (NOI) to the State Board 14 days prior to commencing industrial operations. Industrial storm water dischargers that do not submit an NOI must submit an application for an individual NPDES permit. (General Permit, Provision E(1), pg. 6 and Attachment 3 to the General Permit.)
9. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (General Permit, Section A(1)(a), pg. 11.) The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges.
10. The SWPPP must include, inter alia, a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source as well as a site map (or maps) that identifies: (a) facility boundaries and an outline of facility drainage areas, (b) the storm water collection and conveyance system, (c) an outline of impervious

areas, (d) locations where materials are directly exposed to precipitation, and (e) areas of industrial activity. (General Permit, Section A(4), pg. 12, 13 and Section A(8), pg. 17.)

11. Facility operators must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. (General Permit, Effluent Limitation B(3), pg. 4.)
12. Facility operators must develop a written monitoring program, and must conduct quarterly visual observations of non-storm water discharges, monthly visual observations of storm water events, and prescribed storm water sampling and analysis. (General Permit, Section B(1), (3), (4), and (5), pg. 24-27.) In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit, Section B(14), pg. 35.) A copy of the written monitoring program as well as records of inspections, steps taken to reduce or prevent discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit, Section B(13), pg. 34.)
13. The Port of Stockton (Port) is a division of the City of Stockton, a municipality and a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5). The majority of the property within the Port's boundaries is owned by the Port and leased to tenants operating in various industrial categories. The remaining properties are privately owned and operated.
14. The Port does not assume responsibility for compliance with storm water requirements at any of its tenant facilities. Therefore, industrial operators within the Port's boundaries must independently obtain coverage under the General Permit.
15. A-Plus Materials Recycling (A-Plus Materials or Respondent) is a California corporation, licensed to do business in California and is thus a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5).
16. A-Plus Materials operates a facility within the Port's boundaries, located at 250 Port Road, Stockton, California (Facility). Respondent is engaged in scrap materials recycling at the Facility, an industrial activity classified under SIC 5093.
17. Respondent submitted an NOI to the State Board. The State Board assigned Waste Discharge Identification (WDID) Number 5S39I018275 to Respondent for the Facility on July 30, 2003.
18. Rainfall events at the Facility that exceed 0.1 inches are generally sufficient to generate storm water runoff. Data from the Stockton Metro Airport Weather Monitoring Station, approximately six miles from the Facility, indicate that there were approximately 164

days with more than 0.1 inches of rainfall at the Facility from November 1, 2003 through September 1, 2008.

19. Storm water runoff at the Facility discharges through storm drains located near and within the Facility to the San Joaquin River. The storm drains are owned by the Port and are part of its municipal separate storm sewer system (MS4). The Facility's storm drains and the Port's MS4 are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The storm water discharged from the Facility contains "pollutants," including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is storm water discharge associated with industrial activity as defined by EPA regulations in 40 CFR § 122.26(b)(14).
21. The San Joaquin River is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined by EPA regulations in 40 CFR § 122.2.
22. Portions of the San Joaquin River have been listed under Section 303(d) of the Act, 33 U.S.C. § 1313(d), as an impaired water body for low dissolved oxygen, electrical conductivity, selenium, and mercury among other pollutants.
23. On March 19, 2008, a representative of EPA, accompanied by Central Valley Regional Water Quality Control Board staff, inspected the Facility to evaluate Respondent's compliance with the General Permit. The inspection report is attached and incorporated by reference, and contains evidence that Respondent:
 - a. Failed to develop a complete SWPPP, as required by the General Permit (General Permit, Section A, pg. 11-23), including:
 1. Failed to develop an adequate site map, as required by the General Permit (General Permit, Section A(4), pg. 12);
 2. Failed to include all Potential Pollutant Sources, such as concrete manufacturing and construction materials and soil storage, as required by the General Permit (General Permit, Section A(6), pg. 15);
 3. Failed to include BMPs to be implemented to control each potential pollutant and its source, as required by the General Permit (General Permit, Section A(8), pg. 17); and
 4. Failed to include the signature of the responsible party, as required by the General Permit (General Permit, Section C, pg. 9-10).
 - b. Failed to implement adequate BMPs at the Facility as required by the General Permit (General Permit, Section A, pg. 11-23), including:
 1. Failed to implement adequate BMPs at the acid wash area in the concrete manufacturing area in order to prevent track-out;
 2. Failed to implement adequate BMPs to prevent sediment from leaving the soil stockpiles and entering the storm drain inlet;

3. Failed to adequately contain wash water from concrete manufacturing area in order to prevent it from co-mingling with storm water discharges;
 4. Failed to implement adequate BMPs to ensure that materials used in concrete manufacturing are not discharged with storm water; and
 5. Failed to adequately protect all storm drain inlets in the materials recycling area to prevent pollutants from discharging.
- c. Failed to conduct its annual comprehensive site compliance evaluations or submit and retain copies of the evaluations, as required by the General Permit (General Permit, Section A(9), pg. 21, 22); and
 - d. Failed to comply with the Monitoring Program and Reporting Requirements (Monitoring Program) of the General Permit (General Permit, Section B, pg. 24-45), including:
 1. Failed to conduct sampling or maintain records of sampling activities at all storm water discharge locations, as required by the General Permit (General Permit, Section B(5)(a), pg. 26, and Section B(13), pg. 34); and
 2. Failed to conduct non-storm water visual observations and storm water discharge visual observations or maintain records of such observations, as required by the General Permit (General Permit, Section B(3) and B(4), pg. 25, 26, and Section B(13), pg. 34).
24. EPA has developed a set of parameter benchmarks values (PBVs), based primarily upon water quality criteria, to measure the adequacy of a permittee's storm water controls. (See "Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice" (MSGP 2000); Federal Register Vol. 65, No. 210, October 30, 2000, pp. 64766-64767.) Exceedances of PBVs are intended to alert permit-holders of the need to improve BMPs. The State of California has adopted EPA's PBVs under its stormwater program (<http://www.waterboards.ca.gov/stormwtr/docs/smanlrdc.pdf>). There is no evidence that Respondent has ever evaluated the adequacy of its BMPs.
25. Based on the foregoing, EPA has determined that Respondent has violated the CWA as follows:
- a. Respondent's failure to develop and implement an adequate SWPPP while engaged in industrial activity at the Facility violated the General Permit (General Permit, Provision E(2), pg. 6, and Section A, pg. 11-23), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a);
 - b. Respondent's failure to develop and implement adequate BMPs at the Facility violated the General Permit (General Permit, Effluent Limitation B(3) pg. 4), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a); and
 - c. Respondent's failure to develop and implement an adequate Monitoring Program while engaged in industrial activity at the Facility violated the General Permit (General Permit, Provision E(3) pg. 6, and Section B, pg. 24-45), which was issued

pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violations and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Section 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ordered that Respondent comply with the following requirements:

26. Immediately upon receipt of this Order, Respondent shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.
27. *03/04* Within 15 days of receipt of this Order, Respondent shall submit a photocopy of the current SWPPP to EPA. Respondent shall include any and all inspection reports, monitoring records, and annual reports required by the General Permit. If no such reports or records exist, Respondent shall state that no such records exist.
28. Within 15 days of receipt of this Order, Respondent shall submit a photocopy of the SWPPP that was in use at the Facility during the March 19, 2008 inspection.
29. Within 15 days of receipt of this Order, Respondent shall submit a certified statement indicating the date of its commencement of industrial activities at the Facility.
30. Within 21 days of receipt of this Order, Respondent shall complete interim cleanup and housekeeping measures (Interim Measures) for all of the Facility's areas of industrial activity, including but not limited to:
 - a. Implementation of adequate BMPs at the acid wash station;
 - b. Implementation of adequate BMPs at the construction materials and soil storage area;
 - c. Implementation of adequate BMPs to control wash water and other materials from the concrete manufacturing area; and
 - d. Adequately protect all storm drain inlets in the materials recycling area to prevent the discharge of pollutants in storm water runoff.
31. Within 21 days of receipt of this Order, upon completion of the Interim Measures, Respondent shall submit a Notice of Completion to EPA, which shall include a list of the Interim Measures taken, the date each Interim Measure was completed, the person(s) responsible for overseeing completion of each Interim Measure, and copies of documents associated with the completion of the Interim Measures, such as contracts, permits, manifests, and photographs.

32. In performing the Interim Measures, care shall be taken to ensure they do not cause or contribute any runoff to waters of the United States, the municipal storm drains, or the municipal sewer system. Care shall be taken to ensure compliance with all applicable federal, state, and local waste storage and disposal requirements.
33. Within 45 days of the receipt of this Order, Respondent shall submit a revised SWPPP to EPA that fully complies with the General Permit. The SWPPP revisions shall include, among all other required elements:
 - a. A facility site map;
 - b. A listing of all potential pollutant sources and appropriate BMPs for, among other sources, concrete manufacturing and construction materials and soil storage; and
 - c. A signature and certification for the SWPPP by Respondent's appropriate representative.
34. Within 45 days of the receipt of this Order, Respondent shall submit a revised written Monitoring Program to EPA that fully complies with the General Permit.
35. Within 45 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with: development of the revised SWPPP, projected incremental annual costs associated with implementation of the revised SWPPP, development of the revised Monitoring Program, projected incremental annual costs associated with implementation of the revised Monitoring Program, and any other costs associated with complying with this Order.
36. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 CFR § 122.22 (b)(2)) and shall include the following statement:

"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, I certify that 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."

37. All submissions requested by this Order shall be mailed to the following address:

U. S. Environmental Protection Agency - Region 9
Clean Water Act Compliance Office WTR-7
75 Hawthorne Street

San Francisco, CA 94105
Attention: Ellen Blake

All telephone inquiries should be made to Ellen Blake, Senior Environmental Scientist, at (415) 972-3496.

38. Respondents shall send a copy of all submissions required under this Order to:

California Regional Water Quality Control Board –Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Attention: Nova Clemenza

39. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.
40. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.
41. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
42. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).
43. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
44. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition,

Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.

45. This Order shall become effective upon the date of receipt by Respondent.

Alexis Strauss, Director
Water Division

Date

EPA NPDES Industrial Stormwater Compliance Inspection Report

Section A: National Data System Coding

NPDES										Permit ID Number									
C	A	S	0	0	0	0	0	1	5	s	3	9	i	0	1	8	2	7	5
SIC CODE																			
5	0	9	3																

Section B: Facility Data

Name and Location of Facility Inspected A-Plus Materials Recycling 250 Port Road Stockton, CA 95203		Entry Time/Date 3/19/08 2:45 p.m.	Permit Effective Date 7/30/2003
		Exit Time/Date 3/19/08 4:15 p.m.	Permit Expiration Date
Name(s) of On-Site Representatives Eric Horton		Title(s) Owner	
Name, Address of Responsible Official (mailing address) Eric Horton, 2710 Loomis Road		Title Owner	
Receiving Water San Joaquin River		Phone Number (209) 462-9168	Contacted: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Section C: Areas Evaluated During Inspection

(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

S	Permit	M	Records/Reports	U	Facility Site Review	N	Effluent/Receiving Waters	U	Self-Monitoring Program
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Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

SWPPP was not signed at time of inspection.

SWPPP is inadequate: site map did not locate storm drains, no BMPs listed, No monitoring records. No samples conducted since 2004. No inspection logs in the SWPPP.

Acid containment inadequate, need to protect the acid area from vehicles: see photo DSCN0629. Acid washwater is left to evaporate or percolate into the ground. Washwater should be contained so as to not commingle with any Stormwater discharges from the Facility.

SIC is 5093 for Recycling. In addition, APlus has conducted concrete manufacturing for 1 1/5 years. In addition, APlus stores 4 acres of sediment and construction materials across the street from the main office. This 4 acres is not on the site map, is not described in the SWPPP. Stormdrains belonging to the City are close to the sediment piles and receive runoff from the sediment piles. Protection of a straw wattle and some rocks do not protect from nearby sediment piles. See photo DSCN0637.

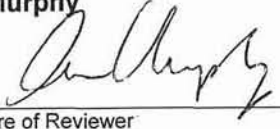
Name(s) and Signature(s) of Inspector(s) Ann Murphy 	Agency/Office/Telephone US EPA Region 9 Clean Water Act Compliance Office (WTR-7) (415) 972-3640	Date 7/3/2008
Signature of Reviewer Jeremy Johnstone 	Agency/Office US EPA Region 9 Clean Water Act Compliance Office (WTR-7) (415) 972-3499	Date

Photo Log

Image No.	Description
DSCN0621	Entry sign
DSCN0622	Exit sign, truck trackout warning
DSCN0623	Truck wash island, acid foam applied to remove the cement.
DSCN0624	Stormdrains on the property are protected with wattle and sock, with the exception of storm drain in the processing area. See photos DSCN0633, 34, 41, and 42.
DSCN0625	See description on photo DSCN0624.
DSCN0626	Concrete manufacturing station.
DSCN0627	Covered and contained materials for concrete manufacturing.
DSCN0628	Water from activities for concrete manufacturing.
DSCN0629	A second truck wash island. Note the acid container on the left in a square cage.
DSCN0633	Storm drain in the processing area, located under the conveyor belt, beyond the trash dumpster.
DSCN0634	Storm drain of photo DSCN0633, covered with plywood.
DSCN0636	A Plus sign-age
DSCN0641	Storm drain of photo DSCN0633, uncovered. Debris from the yard is in the stormdrain.
DSCN0642	See description of photo DSCN0641.
DSCN0637	Additional 4 acre yard not in the SWPPP. Mr. Horton said this is a construction materials storage yard. Note the City stormdrain surrounded by a wattle.
DSCN0638	Construction materials stored in 4 acre area across from the main yard.
DSCN0639	Electronic materials stored in 4 acre area across from the main yard. Owner said these would be removed immediately.

