

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2017-0033
Iowa City Ready Mix, Inc.)	
Iowa City, Iowa)	
)	
)	COMPLAINT,
)	CONSENT AGREEMENT AND
Respondent)	FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

A. COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 (EPA) and Respondent, Iowa City Ready Mix, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order (CA/FO) serves as notice that the EPA has reason to believe that the Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342; and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

5. Respondent is Iowa City Ready Mix, Inc., a corporation authorized to do business in the state of Iowa.

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 National Pollutant Discharge Elimination System (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.

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 conform 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)(ii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified as Standard Industrial Classification SIC code 3273 (Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Concrete Sand & Gravel Facilities).

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

13. IDNR issued and implemented NPDES General Permit No. 3 (General Permit) for stormwater discharges associated with industrial activity for Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Concrete Sand & Gravel Facilities. The most recent 5-year permit has an effective date of October 1, 2012, and an expiration date of October 1, 2017.

14. Any individual seeking coverage under NPDES General Permit No. 3 is required to submit a Notice of Intent (NOI) to IDNR in accordance with the requirements of Part II.C of

the Permit. As required by Section III.C.1 of the General Permit, a Stormwater Pollution Prevention Plan (SWPPP), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site and fully implemented concurrently with operations at the facility before the NOI is submitted to IDNR.

General Factual and Legal Allegations

15. Respondent is and was at all times relevant to this action the owner and/or operator of a facility located at 1854 South Riverside, Iowa City, Iowa 52244 (Facility), operating under SIC code 3273. The Facility produces and transports ready mixed concrete to commercial and residential customers in the Iowa City area. On site storage of raw material consists of sand, lime stone, cement, fly ash, and various concrete mixtures that are brought into the site via trucks. The main source of pollutants in stormwater runoff is from truck washout and excess water draining from the mixing trucks during loadout. The Facility is designed with a concrete truck wash pad (wash pad) where runoff from truck washout should be directed to a settling basin (settling basin) which discharges to the Iowa River.

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

17. The Iowa River is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

18. Stormwater, snow melt, surface drainage and runoff water leave Respondent's facility and discharge directly into the Iowa River. The runoff and drainage from Respondent's facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

20. The Facility has "stormwater 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).

21. Stormwater 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).

22. 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.

23. In response to a NOI to discharge submitted by Respondent, IDNR extended authorization under NPDES General Permit No. 3, Permit Authorization No. IA-1724-1607 (hereafter "Stormwater Permit"), to Respondent Iowa City Ready Mix, Inc., for the Facility.

24. At all times relevant to this action, and upon payment of renewal fees and submission of applications for renewal, IDNR extended authorization under the Stormwater Permit to Respondent during permit cycles from October 1, 1997 through October 1, 2017. All discharges of stormwater from the Facility associated with industrial activity during this period were required to comply with the terms and conditions of the Stormwater Permit. Respondent has been required to comply with the Stormwater Permit at all times relevant to this Order.

25. IDNR also issued the Facility an individual NPDES permit (Permit No. IA-5225109), issued on April 1, 2013, and due to expire on March 31, 2018). Subject to the effluent limitations and other requirements, this permit authorizes discharges from a single outfall from a four cell settling basin used to store wastewater from cleaning concrete trucks.

26. On or about June 7, 2013 and June 27, 2014, the IDNR performed inspections at the Facility (IDNR Inspections). One component of the IDNR inspections was to evaluate the facility's compliance with the CWA, including management of stormwater.

27. During both the 2013 and 2014 IDNR inspections, IDNR's inspector observed and documented the Respondent's failure to implement stormwater management controls and that the washout of trucks was occurring from locations at the Facility other than the washout pad, resulting in discharges of non-stormwater pollutants (including, but not limited to, concrete truck washout) from various locations at the Facility into the adjacent Iowa River.

28. On September 9, 2015, the EPA performed an inspection of the Facility (EPA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). One component of the EPA Inspection was to evaluate the Facility's compliance with the CWA and the requirements of the Stormwater Permit, including its management of stormwater at the Facility.

29. During the 2015 EPA Inspection, EPA's inspector observed and documented Respondent's continued failure to implement stormwater management controls, and that the washout of trucks was occurring from locations at the Facility other than the washout pad, resulting in discharges of non-stormwater pollutants (including, but not limited to, concrete truck washout) from various locations at the Facility into the adjacent Iowa River.

30. At or near the conclusion of the EPA 2015 Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation (NOPV) identifying issues that may be violations of Respondent's Permits, including, but not limited to: failure to develop and implement a SWPPP; failure to conduct preventative maintenance and implement good housekeeping practices; failure to install adequate structural controls to prevent sediment runoff and failure to monitor stormwater discharges associated industrial activity. On October 17, 2016, EPA transmitted an administrative compliance order (2016 Order) to Respondent requiring actions to address the cited violations, effective 30 days after receipt, or November 20, 2016 (Docket No. CWA-07-2016-0063).

ALLEGED VIOLATIONS

Count 1 **Discharges of Pollutants**

31. The allegations stated above are re-alleged and incorporated herein by reference.

32. Part III.A. of General Permit No. 3, as authorized and applicable to the Facility, states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water." The Facility's individual Permit (No. IA- 5225109) only authorizes discharges from a single outfall from a four cell settling basin used to store wastewater from cleaning concrete trucks.

33. The IDNR and EPA Inspections, discussed above, documented discharges of pollutants, including, but not limited to, direct discharges of wastewater from concrete truck washout in areas that do not flow to the settling basin and discharges of pollutants in stormwater from other industrial activities resulting from failures to implement adequate BMPs. The pollutants discharged from several locations at the Facility into the Iowa River, including through a ditch adjacent to the Facility. The pollutant discharges are not authorized by General Permit No. 3 or the Facility's individual NPDES permit.

34. The discharges of pollutants into a navigable water, as observed and documented by IDNR's and EPA's Inspections, are violations of the terms and conditions of General Permit No. 3 and the individual NPDES permit, and are therefore violations of Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311(a).

Count 2 **Failure to Develop and Implement a SWPPP**

35. The allegations stated above are re-alleged and incorporated herein by reference.

36. Part III.C. of General Permit No. 3 requires that a SWPPP be developed for each facility covered by the General Permit, and that the SWPPP shall be prepared in accordance with good engineering practices. The SWPPP is required to identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility; and describe and ensure the implementation of practices which will be used to reduce pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the stormwater pollution prevention plan required under this part as a condition of the permit.

37. Part III.C.1. of General Permit No. 3 requires that the SWPPP shall be completed before the Notice of Intent is submitted to the IDNR. Full implementation of the pollution prevention plan is required to be executed concurrently with operations at the subject facility.

38. From at least September 2011 through the date of EPA's 2015 Inspection, Respondent failed to develop and implement a SWPPP for the Facility, in violation of Part III.C.1 of General Permit No. 3.

39. Respondent's failure to develop and implement a SWPPP is a violation of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3
Failure to Implement Adequate Control Measures

40. The allegations stated above are re-alleged and incorporated herein by reference.

41. Part III.C.4.B of General Permit No. 3 requires that each facility covered by the permit shall develop a description of stormwater management controls appropriate to the facility, and, implement such controls.

42. Through at least the date of EPA's 2015 Inspection, Respondent failed to implement adequate control measures at several process areas at the facility where non-stormwater pollutants discharge either into the adjacent ditch which flows to the Iowa River, or directly into the Iowa River. This is a violation of Part III.C.4.B of General Permit No. 3.

43. Respondent's failures to implement adequate control measures are violations of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4
Failure to Conduct Visual Inspections

44. The allegations stated above are re-alleged and incorporated herein by reference.

45. Part III.C.4.C of General Permit No. 3, as authorized and applicable to the Facility, requires that qualified personnel visually inspect designated equipment and plant areas at appropriate intervals specified in the SWPPP, but in no case, not less than once a year.

46. Through at least the date of EPA's Inspection, Respondent had failed to perform inspections at the Facility, in violation of Part III.C.4.C of General Permit No. 3.

47. Respondent's failures to conduct inspections at the Facility are violations of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5
Failure to Conduct Monitoring

48. The allegations stated above are re-alleged and incorporated herein by reference.

49. Part V.B.2.B of General Permit No. 3, as authorized and applicable to the Facility, requires that monitoring (i.e., grab samples) shall be conducted at least annually (1 time per year) for each facility.

50. Through at least the date of EPA's Inspection, Respondent had failed to perform any monitoring at the Facility, in violation of Part V.B.2.B of General Permit No. 3.

51. Respondent's failures to conduct monitoring at the Facility is a violation of the terms and conditions of General Permit No. 3, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

B. CONSENT AGREEMENT.

1. Respondent and EPA agree to the terms of this Consent Agreement and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

2. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal any portion of this CA/FO.

5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

7. Nothing contained in this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. This CA/FO addresses all civil and administrative claims for CWA violations that are specifically alleged herein through the effective date of the 2016 Order (November 20, 2016).

Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

9. The 2016 Order establishes compliance actions required by Respondent to comply with its NPDES permits and the stormwater program. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Facility is in compliance with the referenced 2016 Order.

10. The effect of the settlement described in Paragraph B.8 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph B.9 of this CA/FO.

11. EPA and its authorized representatives shall have access to Respondent's Facility at all reasonable times to monitor Respondent's implementation of the Order. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

12. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$78,000, as set forth, below.

13. Respondent understands that failure to pay any portion of the mitigated civil penalty or stipulated penalties on the proper due dates may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Payment Procedures

14. Respondent agrees to pay a mitigated civil penalty of Seventy-Eight Thousand dollars (\$78,000) within thirty (30) days of the effective date of the Final Order.

15. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2017-0033.

Copies of the check shall be mailed to:

Howard Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

16. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

17. This CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors, or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

General Provisions

18. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

19. Complainant reserves the right to take enforcement action against Respondent for any violations not alleged herein and future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

20. This CA/FO shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

21. Respondent and Complainant shall bear their respective costs and attorney's fees.

22. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

23. Respondent and Complainant agree that this CA/FO can be signed in part and counterpart.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Date

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

IOWA CITY READY MIX, INC.

3/16/17
Date

Matt Knepper

Name (Print) MATT KNEPPER

Title GENERAL MANAGER

C. FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer