

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
WHITAKER AGGREGATES, INC.)	Docket No. CWA-07-2019-0187
d/b/a Centerville Quarry)	
)	
Respondent)	CONSENT AGREEMENT/ FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

The U.S. Environmental Protection Agency, Region 7 (“EPA”) and Whitaker Aggregates, Inc. (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus, this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 (“Consolidated Rules”).

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO serves as notice that EPA has reason to believe that Respondent violated Section 308 of the CWA, 33 U.S.C. §1318.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and by re-delegation, is the Director of Region 7’s Enforcement and Compliance Assurance Division.

4. Respondent, Whitaker Aggregates, Inc. ("Respondent") operates a quarry facility located within Linn County near Centerville, Kansas.

Statutory and Regulatory Framework

5. Section 308(a), 33 U.S.C. § 1318(a), authorizes the EPA to compel information, including records and reports, from owners and operators of any point sources to determine whether such persons are in violation of the CWA.

FACTUAL ALLEGATIONS

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

7. At all times relevant for this action, Respondent is and was the owner and/or operator of a limestone quarry ("facility" or "site"), operating under SIC 1422, comprised of approximately 28 acres located on the east side of Road 1077 just south of Centerville in Linn County, Kansas (NE ¼ of NW ¼ of Section 20, Township 21 South, Range 22 East).

8. The facility operates under NPDES Permit No. KS009275, issued by KDHE on October 23, 2014, and which expires on October 31, 2019. The permit authorizes discharges from the "Outfall 001A1 – Treated wash-water from settling ponds," and "Outfall 001A1 – Pit Drainage and Stormwater Runoff," to the Marais des Cygnes River via Sugar Creek.

9. Respondent's Outfall 001A1 is a "point source" as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. On December 14, 2017, the EPA and Respondent entered into a Compliance Order on Consent (CWA-07-2017-0035). In the Order, Respondent agreed to provide: 1) a revised Centerville Quarry Stormwater Pollution Prevision Plan (SWPPP); 2) sample procedures report for Outfall 001; 3) Discharge Monitoring Reports (DMRs) from April 2016 to present; 4) description of SWPPP training and training documentation; 5) documentation of observations from visual monitoring from April 2016 to present; 6) copies of site inspection reports from April 2016 to present; 7) copies of reports from annual site evaluations from April 2016 to present; 8) documentation and photos of actions taken to come into compliance from April 2016 to present; 9) schedule of additional compliance actions; 10) copies of daily precipitation logs from Outfall 001; 11) a third-party compliance audit of Respondent's six quarry facilities; and 12) Respondent's response to the compliance audit.

11. Respondent failed to provide the following by the deadline outlined in Compliance Order: 1) sample procedures report for Outfall 001; 2) DMRs from April 2016 to present, although, it is acknowledged that these DMRs were provided to the Kansas Department of Health and Environment; 3) documentation of observations from visual monitoring from April 2016 to present; 4) copies of site inspection reports from April 2016 to present; 5) copies of reports from annual site evaluations from April 2016 to present; 6) documentation and photos of actions taken to come into compliance from April 2016 to present; 7) schedule of additional

compliance actions; 8) copies of daily precipitation logs from Outfall 001; 9) third-party audits; and 10) facility's response to audits.

12. On November 16, 2018, EPA issued an Information Request pursuant to CWA Section 308(a), 33 U.S.C. § 1318(a) compelling Respondent to submit the above-referenced Compliance Order submissions ("the Section 308 Information Request"). Respondent was required to provide a response within 30 days. Respondent signed the certified mail receipt on November 21, 2018.

ALLEGATIONS OF VIOLATION

13. Respondent failed to submit the required information pursuant to the Section 308 Information Request within 30 days.

14. Respondent's failure to respond to the Section 308 Information Request with all required information is a violation of Section 308 of the CWA 33 U.S.C. § 1318.

CONSENT AGREEMENT

15. 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 the Final Order.

16. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

18. Respondent and Complainant each agree to bear their own costs and attorney's fees.

19. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

20. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

21. Respondent certifies by the signing of this CA/FO that it is scheduled to be in compliance with Section 308 of the CWA.

22. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in the preceding paragraph of this CA/FO.

PENALTY

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

23. Respondent shall pay a civil penalty of Seven Thousand Five Hundred Dollars (\$7,500). The penalty shall be paid in full no later than thirty (30) days of the effective date of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

24. Respondent shall simultaneously send copies of the transmittal letter and the check to:

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

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

25. Respondent understands that, should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

26. 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.

Reservation of Rights

27. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

28. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

Parties Bound

29. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

30. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

General Provisions

31. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

32. The state of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

DeAndré Singletary
Acting Director
Enforcement and Compliance Assurance Division


Date


Chris Muehlberger
Assistant Regional Counsel

Date

RESPONDENT:

For Whitaker Aggregates, Inc.:


Name/Title


Signature

7-11-19
Date

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

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Consent Agreement and Final Order by certified mail, return receipt requested, to:

Curtis D. Whitaker, President
Whitaker Aggregates, Inc.
555 Delaware Road
Humboldt, Kansas 66784; and

Ellen S. Goldman, Esq.
7944 Santa Fe Drive
Overland Park, Kansas 66204

Date