

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
) Docket No. CWA-07-2018-0152
Kerford Limestone Company)
Weeping Water, Nebraska)
)
Respondent) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

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, Kerford Limestone Company (“Respondent”), 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 serves as notice that the EPA has reason to believe that the Respondent has violated Sections 301, 402 and 404, of the CWA, 33 U.S.C. §§ 1311, 1342, and 1344, 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 the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. Respondent is and was at all relevant times a corporation under the laws of the state of Nebraska.

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*, Sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342, 1344.

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 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.

9. 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 Sections 301 and 402 of the CWA.

10. 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.

11. 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.

12. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications (“SIC”) 10 through 14, mineral industry, including SIC code 1422. *See* 40 C.F.R. §122.26(b)(14)(iii). SIC code 1422 specifically includes establishments primarily engaged in mining or quarrying crushed and broken limestone.

13. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency within the state of Nebraska that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

14. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

15. Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the United States Army Corps of Engineers (hereinafter “Corps”), for any discharge of “dredged or fill material” into the “navigable waters” of the United States.

16. Section 502(7) of the CWA, 33 U.S.C § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include tributaries to, waters of the United States.

17. 40 C.F.R. § 232.2 defines “Discharge of fill material” as “the addition of fill material into waters of the United States.”

18. 40 C.F.R. § 232.2 defines “fill material” as material that “replaces any portion of the waters of the United States with dry land” or which “changes the bottom elevation of a water of the United States.”

19. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, requiring such person to comply.

EPA’s General Allegations

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

21. At all times relevant for this action, Respondent is and was the owner and/or operator of a facility consisting of two subsurface limestone mines, the North Creek Mine and the Creek Mine, a garage / shop, and a mill / crusher area and that performs limestone mining, crushing, milling, and storage of various sizes of limestone and lime (“facility” or “site”), operating under SIC code 1422, located on Fletcher Avenue west of State Highway 50 near Weeping Water, Nebraska.

22. Weeping Water Creek and an unnamed tributary to Weeping Water Creek flow south through the facility. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s site through one of at least four outfalls and flow to Weeping Water Creek.

23. A road with a constructed stream crossing on the facility property crosses Weeping Water Creek and connects the Creek Mine to the mill / crusher area. The constructed stream crossing consists of rock and gravel material. At the time of inspection, Respondent’s representative stated that the crossing has two 36-inch culverts. The crossing was constructed and is maintained and/or repaired by Respondent using earth moving or other heavy equipment.

24. Weeping Water Creek and its unnamed tributary are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

25. Weeping Water Creek is on the 303d list as impaired for E. coli, without an EPA-approved total daily maximum load (“TMDL”).

26. Stormwater from the site contains “pollutants,” and fill materials consisting of rock and gravel are “pollutants,” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

27. Earth moving and other heavy equipment and trucks constitute a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

28. Rock and gravel material constitute “fill material” and its placement or release in Weeping Water Creek constitutes the “discharge of fill material” as defined by 40 C.F.R. § 232.2.

29. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the construction, maintenance and/or repair of the stream crossing referenced in Paragraph 23 above and/or Respondent did not perform the work described herein in compliance with any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

30. Stormwater discharges associated with industrial activity are “point sources” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

31. The facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14).

32. Stormwater runoff from industrial activity at Respondent’s above referenced facility 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).

33. Respondent’s discharge of pollutants, including discharges of stormwater associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

34. On November 8, 2016, NDEQ granted authorization to the facility under General Industrial Stormwater Permit NER910284, for discharges of stormwater runoff to Weeping Water Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. Previously, the facility received authorization in January 2012 to discharge pursuant to NPDES General Industrial Stormwater Permit NER900282, which expired in June 2016. Respondent’s previous and current NPDES permits are substantially the same in all relevant respects for this action (hereinafter “NPDES Permit”).

35. On April 10, 11, and 13, 2017, the EPA performed an Industrial Stormwater Inspection (“Inspection”) of Respondent’s site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.

36. During the Inspection, the EPA inspector toured the facility, observed discharge locations, photographed various stormwater-related areas, and obtained copies of the facility's stormwater pollution prevention plan ("SWPPP"), routine SWPPP inspection reports, training records, and monitoring data.

37. A Notice of Potential Violation ("NOPV") was issued by the EPA inspector at the conclusion of the Inspection.

38. By letter dated April 21, 2017, Respondent provided information in response to the NOPV (hereinafter "NOPV Response").

39. A copy of the Inspection report was sent to Respondent by the EPA by letter dated July 14, 2017.

EPA's Specific Allegations

Count 1

Unauthorized Stream Crossing

40. The facts stated in Paragraphs 1 through 39 above are re-alleged and incorporated herein by reference.

41. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with a CWA Section 404 permit.

42. During the EPA inspection, the inspector observed the constructed stream crossing referenced in Paragraph 23 above and a significant deposit of large rocks and gravel in the stream channel and along the banks of Weeping Water Creek just south of the stream crossing.

43. During the EPA inspection, facility personnel stated that the constructed stream crossing is washed-out approximately three times per year by high flows, indicating that the road crossing impairs the flow or circulation of Weeping Water Creek and requires frequent repair or maintenance.

44. Subsequent to the EPA inspection, Respondent's representative asserted that the crossing was constructed between 1990 and 1991 and was authorized by a nationwide permit in effect at that time for "minor road crossing fill", defined as the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water, provided that the crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows. 33 C.F.R. § 330.5(a)(14)(1988); 51 Fed. Reg. 41,206 (Nov. 13, 1986).

45. Observations by the EPA inspector, facility personnel statements regarding stream crossing washouts, and EPA's review of photographs taken during the EPA inspection and other aerial photographs indicate that the culverts at the crossing are undersized and that the material observed in the stream channel and along the banks of Weeping Water Creek, due to its size and proximity to the crossing, is material washed off the crossing. Therefore, the crossing is not in

compliance with the nationwide permit referenced in Paragraph 44 above because it is not culverted, bridged or otherwise designed to prevent the restriction of and to withstand expected high flows.

46. Respondent's construction and maintenance of the stream crossing without proper design in compliance with a nationwide permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, results in the discharge of pollutants from a point source into waters of the United States and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2

Unauthorized Discharges or Unauthorized Fill

47. The facts stated in Paragraphs 1 through 46 above are re-alleged and incorporated herein by reference.

48. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with an NPDES permit issued pursuant to CWA Section 402 or a CWA Section 404 permit.

49. Section 2.1 of Respondent's NPDES Permit requires Respondent to minimize pollutant discharges from the facility in a variety of ways. Section 2.1.2.10 of Respondent's NPDES Permit requires Respondent to eliminate non-stormwater discharges not authorized by an NPDES Permit.

50. During the EPA Inspection, the inspector observed significant deposits of large rocks and gravel on the banks and within the stream channel of Weeping Water Creek near the constructed stream crossing and in several locations near where berm repairs were needed, indicating that Respondent failed to implement practices to reduce pollutants in stormwater discharges or, in the alternative, that Respondent discharged fill material into Weeping Water Creek.

51. Respondent's alleged discharges of rocks and gravel into Weeping Water Creek are not authorized by Respondent's NPDES permit and occurred without or in violation of a permit issued pursuant to Section 404 of the CWA, and, therefore, these discharges violated Sections 301(a) and 402 or 404 of the CWA, 33 U.S.C. §§ 1311(a), 1342, 1344.

Count 3

Failure to Implement, Maintain and/or Modify Adequate Controls

52. The facts stated in Paragraphs 1 through 51 above are re-alleged and incorporated herein by reference.

53. Sections 2.1, 2.1.1, 2.1.2.5, and 2.1.2.6 of Respondent's NPDES Permit require the facility to select, design, install, and implement control measures to minimize exposure of pollutants to stormwater and minimize stormwater discharges. Further, Section 2.1 provides that if the control measures are not achieving their intended effect of minimizing pollutant

discharges, the facility must modify these control measures as expeditiously as practicable. Section 2.1.2.3 requires that the facility maintain all control measures and to make all necessary repairs or modifications as expeditiously as practicable.

54. During the EPA Inspection, the inspector observed several locations where berms were in need of repair and significant deposits of rocks and gravel on the banks and in the stream channel of Weeping Water Creek near those locations, indicating that control measures are not being implemented, not being maintained, or are inadequate and need to be modified.

55. Respondent's failure to implement, maintain and/or modify adequate control measures is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to Conduct and/or Document Routine Facility Inspections

56. The facts stated in Paragraphs 1 through 55 above are re-alleged and incorporated herein by reference.

57. Section 4.1.1 of Respondent's NPDES Permit requires Respondent to conduct routine inspections each quarter, with at least one per year conducted when stormwater is discharging off-site or to an on-site retention structure. Sections 4.1.2 and 5.4 of Respondent's NPDES Permit require Respondent to document the findings of each routine facility inspection and maintain this documentation onsite with the SWPPP.

58. At the time of the EPA inspection, the facility did not have records of routine inspections conducted for any quarters of 2014, two quarters of 2015, any quarters of 2016, and the first quarter of 2017.

59. Respondent's failure to conduct and/or document routine facility inspections is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5

Failure to Conduct and/or Document Comprehensive Site Inspections

60. The facts stated in Paragraphs 1 through 59 above are re-alleged and incorporated herein by reference.

61. Section 4.3.1 of Respondent's NPDES Permit requires Respondent to conduct and document an annual comprehensive site inspection that covers all areas of the facility, including potential pollutant sources and control measures, reviews monitoring data, and considers visual and analytical monitoring results to determine if corrective actions are needed. Sections 4.3.2 and 5.4 of Respondent's NPDES Permit require Respondent to document the findings of each comprehensive site inspection and maintain the documentation onsite with the SWPPP.

62. At the time of the EPA inspection, the facility did not have records of annual comprehensive site inspections conducted for the years 2013, 2014, 2015, or 2016.

63. Respondent's failure to conduct and/or document annual comprehensive site inspections is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6
Failure to Conduct and/or Document Quarterly Visual Assessments

64. The facts stated in Paragraphs 1 through 63 above are re-alleged and incorporated herein by reference.

65. Section 4.2.1 of Respondent's NPDES Permit requires Respondent to collect a stormwater sample from each outfall quarterly and conduct a visual assessment of each sample, observing for characteristics such as color, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. Sections 4.2.2 and 5.4 require Respondent to document the results of the visual assessments and maintain this documentation onsite with the SWPPP.

66. At the time of the EPA inspection, the facility did not have any records of quarterly visual assessments.

67. Respondent's failure to conduct and/or document quarterly visual assessments is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 7
Failure to Perform Monitoring and Respond to Benchmark Exceedances

68. The facts stated in Paragraphs 1 through 67 above are re-alleged and incorporated herein by reference.

69. Section 6.2 of Respondent's NPDES Permit requires the facility to conduct quarterly benchmark monitoring for total suspended solids ("TSS") in accordance with Sections 3.2, 6.2.1.2, and 8.J.8, and annual impaired waters monitoring for E. coli in accordance with Section 6.2.2.2.

70. Section 6.2.1.2 of Respondent's NPDES Permit requires that if the value of the average of four quarterly benchmark monitoring values exceeds the benchmark of 100 mg/l for TSS, the facility must review the selection, design, installation, and implementation of control measures to determine if modifications are necessary and either make the necessary modifications and continue benchmark monitoring until four additional quarters show no further exceedances, or document and notify NDEQ of the rationale for a determination that no further pollutant reductions are technologically available and economically practicable. Further, Section 3.2 of Respondent's NPDES Permit requires that if less than four quarterly samples have been

taken, but an exceedance of the benchmark level is mathematically certain, then the control measures review and modification process outlined above is triggered. Section 5.4 of Respondent's NPDES Permit requires documentation of any benchmark exceedances and the facility's response to be kept with the SWPPP.

71. A review of the facility's monitoring records showed that the facility failed to collect benchmark monitoring samples quarterly, although the facility collected one sample for TSS annually in 2013, 2015 and 2016, and that the facility failed to collect any annual samples for E. coli.

72. The annual TSS samples taken in 2015 and 2016 exceeded the benchmark at two of the facility's outfalls by more than four times the benchmark value. At the time of the EPA inspection, the facility did not have documentation of the required review of control measures or a determination of whether modifications were necessary, nor did NDEQ have any notification of such determination.

73. Respondent's failure to perform monitoring and failure to follow the process to review control measures in response to benchmark exceedances and/or document the response to benchmark exceedances is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 8 Failure to Conduct and/or Document Employee Training

74. The facts stated in Paragraphs 1 through 73 above are re-alleged and incorporated herein by reference.

75. Section 2.1.2.9 of Respondent's NPDES Permit requires Respondent to train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit at least annually. Section 5.4 of Respondent's NPDES Permit requires records of employee training, including date training received, to be kept with the SWPPP.

76. At the time of the EPA Inspection, the facility did not have records of training conducted in 2013, 2015, or 2016.

77. Respondent's failure to conduct employee training is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Penalty

78. As alleged in the preceding Counts, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$20,965 per day for each day during which the violation continues, up to a maximum of \$262,066.

CONSENT AGREEMENT

79. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

80. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

81. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

82. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

83. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order 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.

84. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

85. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/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 Consent Agreement/Final Order. The parties agree that the factual allegations and legal conclusions in this Consent Agreement/Final Order shall not bind Respondent in proceedings before another agency nor be relied upon by any other agency for any type of determination made thereby, and that this Consent Agreement/Final Order is not intended to benefit or bind any party or agency that is not a party to this proceeding.

86. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's facility is in current compliance with NPDES Permit No. NER900282 and is scheduled to be in compliance with EPA's January 23, 2018 Administrative Order for Compliance on Consent, Docket No. CWA-07-2018-0007 to bring it into compliance with Sections 301, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1342, 1344, and applicable regulations.

Penalty Payment

87. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of Fifty-One Thousand and Ninety Six Dollars (\$51,096) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C.

§ 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

88. The payment of penalties must reference docket number “CWA-07-2018-0152” and be remitted using one of the payment methods specified in Appendix A to this Order.

89. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

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

and

Shane E. C. McCoin
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

90. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

91. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any 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.

Effect of Settlement and Reservation of Rights

92. Respondent’s payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

93. The effect of settlement described above is conditional upon the accuracy of the Respondent’s representations to the EPA, as memorialized in Paragraph 86 of this Consent Agreement/Final Order.

94. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

95. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order 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.

96. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

97. 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.

98. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

99. The state of Nebraska 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).

100. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

101. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, U.S. Environmental Protection Agency:

Issued this _____ day of _____, 2018.

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Shane E. C. McCoin
Assistant Regional Counsel
Office of Regional Counsel

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

APPENDIX A PENALTY PAYMENT INFORMATION

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact: Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

ONLINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "SFO 1.1" in the search field

Open form and complete required fields.