

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-09-2018-0003
)	
Argent Materials, Inc.)	
Oakland, CA)	COMPLAINT, CONSENT AGREEMENT
Respondent.)	AND PROPOSED FINAL ORDER
)	
)	<i>Class I Administrative Penalty Proceeding</i>
)	<i>under Section 309(g) of the Clean Water Act,</i>
)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
)	<i>22.13(b) and 22.18</i>

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class I civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311 (a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter “Complainant.”
3. Respondent is Argent Materials, Inc. (“Respondent”).
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States. CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(vi) defines stormwater discharges associated with industrial activity to include inter alia, those generated at facilities involved in the recycling of materials classified under SIC Code 5093.
8. 40 C.F.R. § 122.26(b)(14)(iii) defines stormwater discharges associated with industrial activity to include inter alia, those generated at facilities involved in gravel preparation operations classified under SIC Code 1442.
9. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
10. The State of California has an EPA-authorized NPDES program and issues permits, including industrial storm water permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015 (hereinafter, “General Permit”).
11. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class I civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$187,500 in total, against a person for CWA Section § 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, the EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

12. Respondent is a California corporation and therefore, a person within the meaning of CWA §

Section 502(5), 33 U.S.C. § 1362(5). Respondent operated a concrete and asphalt recycling plant located at 8300 Baldwin Street, Oakland, California, hereinafter the “Facility.”

13. Respondent has been engaged in concrete and asphalt recycling at the Facility since at least November 12, 2013, a date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 5093 and are therefore an “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(vi). Respondent’s operations may also fall within activities classified under SIC Code 1442. An activity under Code 1442 is also considered an “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(iii).
14. Stormwater runoff from the Facility discharges from material stockpiles and truck tires to a storm drain inlet connected to the Oakland municipal separate storm sewer system (MS4). Such conveyances, including curbs, gutters and inlets and the Oakland MS4 are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
15. Stormwater runoff from the Facility is a “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(iii) and (vi).
16. Stormwater discharges from the facility include dirt and crushed rock, and therefore contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
17. Discharges from the Facility enter the Oakland MS4 and discharge into San Leandro Bay, a tributary to the San Francisco Bay, which flows to the Pacific Ocean. San Leandro Bay, San Francisco Bay and the Pacific Ocean are “waters of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7) and implementing regulations.
18. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
19. On or around November 12, 2013, Respondent submitted an NOI to the State Water Board seeking coverage under the General Permit for the Facility. In January 2014, the State Water Board granted Respondent coverage under the General Permit and assigned WDID Number 2 01I024617 for the Facility.
20. EPA inspected the facility on March 21, 2017. The EPA Inspector observed large amounts of exposed concrete, asphalt and crushed rock stockpiles on mostly unpaved surfaces. The inspector also observed no perimeter controls or other control measures to address the stormwater discharges. The Facility personnel did not produce any records of required visual observations.
21. Between the start of operations on November 12, 2013 and the inspection on March 21, 2017, at least 36 days with rainfall in excess of 0.5 inches were recorded at the Oakland Airport. Upon information and belief, EPA alleges each of these rainfall events resulted in a discharge of stormwater from the Facility.

IV. ALLEGED VIOLATIONS

22. Between November 12, 2013 and March 21, 2017 Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a) on at least 36 days by discharging pollutants from a point source into waters of the United States in violation of the terms of its NPDES permit.
23. Respondent's BMPs for Good Housekeeping, Erosion and Sediment Controls, and Material Handling and Waste Management at the Facility were inadequate. Respondent's failure to implement adequate BMPs is a violation of General Permit Section X.H.2.
24. Respondent's Monitoring Implementation Plan was inadequate, and no records of visual observations were recorded. Respondent's failure to conduct adequate compliance monitoring at the Facility and inadequate Monitoring Implementation Plan are violations of General Permit Section X.I.
25. Respondent's SWPPP did not clearly describe the industrial processes, dust and particulate generating activities, or the erodible surfaces as Potential Pollutant Sources. Respondent's failure to adequately meet the SWPPP requirements is a violation of General Permit Section X.G.1.

V. ADMINISTRATIVE PENALTY

26. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g) Respondent shall pay to the United States a civil administrative penalty in the amount of \$27,000 within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.
27. Respondent shall make penalty payment by one of the options listed below:
 - a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:
 - i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000
 - ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties

1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

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)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

28. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.

29. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)

U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Lawrence Torres
Clean Water Enforcement Section II (ENF-3-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

30. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
31. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

32. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, successors and assigns. Action or inaction of any persons, firms, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

33. In accordance with 40 C.F.R. § 22.18(b), for this proceeding, Respondent:
 - a. admits the jurisdictional allegations of the complaint;
 - b. neither admits nor denies the facts stipulated in the consent agreement;
 - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
 - d. waives any right to contest the allegations set forth in this CA/FO; and

- e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

- 34. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
- 35. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

- 36. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

- 37. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

- 38. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
- 39. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

For Complainant, the U.S. Environmental Protection Agency, Region 9

/s/

3/23/18

Thanne Berg
Acting Assistant Director
EPA Region IX Enforcement Division

Date

Of Counsel: Julia Jackson
Asst. Regional Counsel
EPA Region IX

For Argent Materials, Inc.

/s/

Bill Crotinger
General Manager

3/8/18

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

Argent Materials, Inc.
Oakland, CA

Proceedings under Section ---(c)
of the Clean Water Act, as amended
42 U.S.C. §---

DOCKET NO. CWA-09-2018-0003

**CONSENT AGREEMENT
AND
[PROPOSED] FINAL ORDER**

The United States Environmental Protection Agency Region IX (“EPA”), and Argent Materials, Inc. (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the “Findings and Proposed Administrative Order with Administrative Civil Penalty” (“Complaint”), regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2018-0003) be entered; and
2. Respondent shall pay an administrative civil penalty of twenty-seven thousand dollars (\$27,000) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.
3. Pursuant to 40 C.F.R. §§ 22.4(c) and 22.31(d), the Presiding Officer retains jurisdiction to hear motions pertaining to enforcement of the compliance requirements of the Consent Agreement, including disputes regarding the assessment of stipulated penalties.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Complaint issued by EPA in this proceeding.

Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: _____