

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

IN THE MATTER OF)
)
) Docket No. CWA-07-2019-0177
)
 Bruening Rock Products, Inc.)
 (S&S Mine, Knoxville, Iowa)) COMPLAINT, CONSENT
) AGREEMENT AND FINAL ORDER
)
 Respondent.)
)
 Proceedings under Section 309(a)(3))
 of the Clean Water Act,)
 33 U.S.C. § 1319(a)(3))
 _____)

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, Bruening Rock Products, 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 Enforcement and Compliance Assurance Division of EPA, Region 7.

5. Respondent is Bruening Rock Products, 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.

General Factual and Legal Allegations

8. Bruening Rock Products, Inc. is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. At all times relevant to this Order, Respondent or its affiliated entities was, and still is, the owner and/or operator of the S&S Mine in Marion County, Iowa (Facility). The Facility is approximately 55 acres and includes a sub-surface limestone mine, a wash plant, a rock crushing operation, and several product stockpiles on the surface. The Facility is located at 1746 Highway 14, Knoxville, Iowa 50138.

10. An unnamed tributary of English Creek and English Creek flow along the north side of the property. The unnamed tributary flows west to east just north of the north stockpile area and flows for approximately ¼ mile then enters English Creek. Mine dewatering wastewater and surface runoff from some areas of the Facility drain into a two-stage treatment lagoon, which discharges via an outfall (001) to English Creek.

11. The Respondent’s facility is a “point source” that “discharges pollutants” to “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

12. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

13. Discharges from Outfall 001 from the Facility’s lagoon treatment system are authorized under the authority of the Iowa site specific NPDES permit number IA-0084051 (Wastewater Permit), issued to Respondent on August 1, 2012, pursuant to the authority of Section 402 of the CWA, 33 U.S.C. § 1342. The Permit expired on July 31, 2017, and has been administratively extended. The Permit does not address or authorize stormwater pollutant runoff from the surface operations at the Facility.

14. On or about April 30, 2018, through May 2, 2018, an EPA representative performed a Compliance Sampling Inspection (hereafter “Inspection”) of the Respondent’s facility to evaluate the Respondent’s compliance with its NPDES Wastewater Permit and the CWA. During the Inspection, the inspector reviewed the Respondent’s records and conducted a visual inspection of the Respondent’s facility and collected composite samples. A Notice of Potential Violation (NOPV) was issued at the conclusion of the Inspection. A copy of the inspection report was sent to Respondent by letter dated June 13, 2018, which identified the violations including those described below.

15. On or about November 8, 2018, EPA and Respondent entered into an administrative compliance order (2018 Order) that required Respondent to take actions to address the permit violations cited by EPA’s inspection, as well as the CWA’s industrial stormwater program (Docket No. CWA-07-2018-0329).

ALLEGED VIOLATIONS

Count 1

Effluent Limitation Violations

16. The facts stated in Paragraphs A.1 through A.15 above, are hereby incorporated by reference.

17. As set forth in Table 1 below, Page 3 of the Wastewater Permit includes interim and final effluent limitations for Outfall 001. The Wastewater Permit states that interim limits start August 1, 2012, and end July 31, 2017, with the final limits effective after July 31, 2017. While interim Total Suspended Solids (TSS), pH and sulfate limits were effective immediately upon issuance of the Wastewater Permit, the Wastewater Permit did not require Respondent to comply with the final sulfate limits until July 31, 2017. The interim and final limits for pH and TSS are the same.

Table 1:

| Pollutant Parameter | Type of Limit | 7 Day Average/ Minimum | 30 Day Average | Daily Maximum | Units |
|--------------------------------|----------------------|-------------------------------|-----------------------|----------------------|----------------|
| Total Suspended Solids (“TSS”) | Interim/final | | 30.0 | 45.0 | Mg/L |
| pH (minimum-maximum) | Interim/final | 6.0 | | 9.0 | Standard Units |
| Sulfate (As SO4) | Final | | 1514.0 | 1514.0 | Mg/L |

18. The Facility's discharge monitoring reports (DMRs) for the period between September 2013 and July 2018 document sample results for effluent discharges with exceedances of the Permit's interim and/or final effluent limits for TSS in fifteen months, and the effluent limits for Sulfates (SO₄) in fifty-two of the fifty-nine months, including seven months after the deadline for compliance of July 31, 2017, as set forth in Appendix A to this Order below (October 2017, and January, March, April, May, June, and July 2018).

19. EPA's inspector took 24-hour composite samples on May 1 and May 2, 2018. Respondent's effluent exceeded the Permit's daily maximum limit for SO₄ on both days composite samples were collected. EPA's May 1 sample contained 2,810.0 Mg/L SO₄ and the May 2 sample contained 2,790.0 Mg/L SO₄. Additionally, after EPA's inspection and NOPV, EPA acquired Respondent's DMRs for the months of June and July 2018, which documented additional violations of the limits for TSS and SO₄ (as set forth in Appendix A to this Consent Agreement and Final order).

20. Respondent's violations of the Permit's effluent limitations for TSS and SO₄, as identified in Paragraphs A.18 and /or 19 above, and Appendix A of this CA/FO, are violations of the terms and conditions of its Permit, issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2 Effluent Testing Violations

21. The facts stated in Paragraphs A.1 through A.20 above, are hereby incorporated by reference.

22. Page 4 of the Wastewater Permit contains the monitoring and reporting requirements. The Wastewater Permit requires monthly 24-hour composite samples be collected for TSS and weekly 24-hour composite samples be collected for Sulfate as SO₄.

23. The EPA inspection revealed that prior to the dates of EPA's inspection, the Facility had only taken monthly grab samples for TSS and weekly grab samples for Sulfate as SO₄, instead of 24-hour composite samples, as required by the Wastewater Permit.

24. Respondent's violation of the sampling requirements of the Wastewater Permit, as identified in Paragraph A.23 above, is a violation of the terms and conditions of its Wastewater Permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations.

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 2018 Order (November 1, 2018). 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 2018 Order establishes compliance actions required by Respondent to comply with its NPDES permit and the CWA's stormwater program. Respondent certifies by the signing of this CA/FO that Respondent's Facility is in compliance with the CWA at the S&S Mine, and the referenced 2018 Order and will remain in compliance in compliance with the 2018 order and any amendments.
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 \$120,000, and any applicable interest, as set forth in Appendix B, 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 the remaining balance of said penalty, along with applicable interest thereon at the applicable statutory rate, and applicable fees and penalties.

Payment Procedures

14. Respondent agrees to pay a mitigated civil penalty of One Hundred and Twenty Thousand dollars (\$120,000), plus applicable interest, in accordance with the payment schedule set forth in Appendix B to this CA/FO.

15. Payment of the penalty shall be by cashier or certified check(s) 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.

All payments shall reference docket number CWA-07-2019-0177.

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

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

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

FOR BRUENING ROCK PRODUCTS, INC.:

Date: 4/22/19

By: 
Name: Jay S. Bruns
Title: President

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

DeAndre Singletary
Acting Director
Enforcement and Compliance Assurance Division

Date

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

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

Appendix A
 Effluent Limit Exceedances

| Month | Parameter | Limit | Reported Value | Type of Exceedance |
|-------|-----------|---|------------------------------|-------------------------------|
| 3/16 | TSS | 30/45 mg/L monthly average/daily maximum | 72 mg/L | Monthly Avg./ & Daily Max |
| 8/16 | TSS | 50 mg/L/30/45 mg/L monthly average/daily maximum | 80.3 mg/L | Monthly Avg./ & Daily Max |
| 9/16 | TSS | 30/45 mg/L monthly average/daily maximum | 50.3 mg/L | Monthly Avg./ & Daily Max |
| 10/16 | TSS | 30/45 mg/L monthly average/daily maximum | 66.7 mg/L | Monthly Avg./ & Daily Max |
| 11/16 | TSS | 30/45 mg/L monthly average/daily maximum | 46.7 mg/L | Monthly Avg./ & Daily Max |
| 12/16 | TSS | 30/45 mg/L monthly average/daily maximum | 51.3 mg/L | Monthly Avg./ & Daily Max |
| 10/17 | Sulfate | 1514 mg/L monthly average/daily maximum | 1,960 mg/L 1,780 mg/L | Daily Max Monthly Avg. |
| 1/18 | Sulfate | 1514 mg/L monthly average/daily maximum | 1,570 mg/L | Monthly Avg./ & Daily Max |
| 3/18 | Sulfate | 1514 mg/L monthly average/daily maximum | 2,200 mg/L | Daily Max |
| 4/18 | Sulfate | 1514 mg/L monthly average/daily maximum | 2,280 mg/L 1,815 mg/L | Daily Max Monthly Avg. |

| | | | | |
|-------|---------|---|------------------------------|-------------------------------|
| 5/18* | Sulfate | 1514 mg/L monthly average/daily maximum | 2,810 mg/L 2,790 mg/L | Monthly Avg./ & Daily Max |
| 6/18 | TSS | 30/45 mg/L monthly average/daily maximum | 42 mg/L | Monthly Avg. |
| 6/18 | Sulfate | 1514 mg/L monthly average/daily maximum | 1,720 mg/L | Monthly Avg. |
| 7/18 | Sulfate | 1514 mg/L monthly average/daily maximum | 2,460 mg/L 1,585 mg/L | Daily Max Monthly Avg. |

*Sampling conducted by EPA during the EPA inspection

Appendix B:

I

Bruening Rock Products, Inc

Installment Payment Schedule

| Payment | <u>Payment Due</u> <u>Dates; days after</u> <u>Effective Date</u> | <u>Amount Due</u> | | | <u>Outstanding</u> <u>Principal</u> |
|-----------|---|-------------------|-------------|------------------|--|
| | | <u>Due</u> | <u>Int.</u> | <u>Principal</u> | |
| | | | | | \$120,000.00 |
| Payment 1 | 30 days after | \$20,058.37 | \$100.00 | \$19,958.37 | \$100,041.63 |
| Payment 2 | 60 days after | \$20,058.37 | \$83.37 | \$19,975.00 | \$80,066.43 |
| Payment 3 | 90 days after | \$20,058.37 | \$66.72 | \$19,991.65 | \$60,074.98 |
| Payment 4 | 120 days after | \$20,058.37 | \$50.06 | \$20,008.31 | \$40,066.67 |
| Payment 5 | 150 days after | \$20,058.37 | \$33.39 | \$20,024.98 | \$20,041.69 |
| Payment 6 | 180 days after | \$20,058.37 | \$16.68 | \$20,041.69 | \$0 |
| Totals | | \$120,350.22 | \$350.22 | \$120,000.00 | |

Terms

Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order (CAFO). For the calendar year 2019, the rate is 1% per annum. Upon the due date of the first installment, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded, and interest will be calculated based on a 360-day year. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA. Unless excused by EPA, failure by Respondent to timely pay may result in a demand for payment of the entire outstanding balance, plus any applicable penalties, fees and interest. Unless excused, failure by Respondent to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest, as stated in Paragraph B.13 of the Consent Agreement. In computing time, if a due date falls on a Saturday, Sunday, or Federal Holiday, the due date shall be the next day that is not a Saturday, Sunday, or Federal Holiday.