

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
RPC Holdings, Inc., d/b/a)	
River Products Company, Inc.)	Docket No. CWA-07-2019-0254
)	
Respondent)	
)	COMPLAINT AND
Proceedings under)	CONSENT AGREEMENT/
Section 309(g) of the Clean Water Act,)	FINAL ORDER
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 United States Environmental Protection Agency’s (“EPA’s”) 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 of Practice”).

2. Complainant, the United States Environmental Protection Agency Region 7 (“EPA” or “Complainant”) and Respondent, RPC Holdings, Inc., d/b/a River Products Company, Inc. (hereafter, “River Products” or “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 Respondent violated its National Pollutant Discharge Elimination System (“NPDES”) permit for stormwater discharges associated with industrial activity, issued under the authority of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

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, who in turn has delegated the authority to the

Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

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

Stormwater

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) 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 10 through 14, which includes 1422 (Crushed and Broken Limestone). *See* 40 C.F.R. § 122.26(b)(14)(iii).

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. The IDNR issued and implemented NPDES General Permit No. 3 (“GP #3”) for Storm Water Discharges Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, including but not limited to facilities with the SIC 10 through 14. The most recent 5-year permit has an effective date of March 1, 2018, and an expiration date of February 28, 2023, with previous 5-year permits having been issued in 2003, 2008, and 2013. The relevant provisions of each permit, as reissued, are substantially the same. The permit that was set to expire October 1, 2017 was administratively extended until reissuance of the permit, which occurred on March 1, 2018.

14. Any individual seeking coverage under GP #3 is required to submit a Notice of Intent (“NOI”) to the IDNR in accordance with the requirements of Part II. of the permit.

15. As required by Section III.C.1.A. of GP #3, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in Section III.C. of the Permit, must be completed and maintained on site before the NOI is submitted to the IDNR and fully implemented concurrently with operations at the facility.

EPA’s General Allegations

16. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as the River Products Conklin Quarry, located at 3263 Dubuque Street NE, Iowa City, Iowa 52240 (“Facility”), operating under SIC 1422.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge via stormwater outfalls that discharge to Muddy Creek and/or the Iowa River.

18. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

19. Stormwater from Respondent’s 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) and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The Iowa River and Muddy Creek, as identified in Paragraph 17, above, are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. 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).

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

24. After receipt of an NOI and permit fees from Respondent, dated on or about October 4, 2017, the IDNR issued coverage under GP #3, Permit Authorization No. IA-1159-0955 (hereafter "Permit" or "GP #3"), to Respondent with coverage provided through October 1, 2022. Upon Respondent's payment of renewal fees and submission of applications, the IDNR previously extended the GP #3 to Respondent during several additional five-year permit cycles, with the first Permit being issued in 1992 and the most recent previous Permits effective on September 13, 2012.

25. At all times relevant, the Respondent has operated under the Permit and the provisions of the GP #3 have remained substantially the same.

26. On or about April 5, 2019, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with GP #3 and the CWA.

27. During the Inspection, the EPA inspector reviewed Respondent's records related to the GP #3, including Respondent's SWPPP for the Facility, dated October 26, 2009, observed the Facility, and the Facility's stormwater outfalls and stormwater controls. The named outfalls at the Facility include Outfalls 001 and 002, which are stormwater discharge outfalls covered by GP #3, and Outfall 003, which is an industrial wastewater discharge outfall covered by IDNR's NPDES General Permit No. 5 ("GP #5") for Discharges from Mining and Processing Facilities.

28. At the conclusion of the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation ("NOPV") identifying issues that may be violations of Respondent's Permit, including, but not limited to: failure to identify two stormwater outfalls; releases from a sediment trap to Muddy Creek; and failure to maintain a buffer between the stockpile area and the Iowa River. The NOPV offered the Respondent an opportunity to reply, within ten days of receipt, to address any of the potential violations identified by the EPA inspector.

29. Respondent provided a response to the EPA inspector by email dated April 15, 2019, identifying actions it was taking to address the issued identified in the NOPV.

30. A copy of the Inspection report narrative was mailed by the EPA to Respondent by letter dated June 3, 2019.

EPA's Specific Allegations

Count 1

Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP

31. The allegations stated above are realleged and incorporated herein by reference.

32. Part III.C. of GP #3 requires the permittee to develop and implement a SWPPP for each facility covered by GP #3, that: is prepared in accordance with good engineering practices; identifies potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility; and describes and ensures 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. Specific requirements for a SWPPP include the following:

- a. Part III.C.4.A.(1) requires a site map showing the outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and each surface water body;
- b. Part III.C.4.A.(2) requires a narrative description of known significant materials that have been treated, stored or disposed, in a manner to allow exposure to stormwater, during the three years prior to the discharge authorization date of this permit; the method of on-site storage or disposal; materials management practices employed to minimize contact of these materials with stormwater runoff; materials loading and access areas; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives;
- c. Part III.C.4.B.(3) requires the SWPPP to describe a preventive maintenance program that involves inspection and maintenance of stormwater management devices as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters; and
- d. Part III.C.4.B.(6) requires the SWPPP to contain a narrative consideration of traditional stormwater management practices and provide that measures determined to be reasonable and appropriate are implemented and maintained.

33. Part III.C.3. of GP #3 further requires that the SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential to discharge pollutants, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activities.

34. Based on observations documented during the Inspection, review of information provided by the Facility, and other relevant information, the EPA finds that Respondent's SWPPP failed to meet the requirements of Parts III.C. of GP #3. Specific deficiencies of the SWPPP include:

- a. Failure to identify and map all potential sources of pollution, as required by Part III.C.4.A.(1) and (2) of GP #3, including the oil/water separator and the buffer near the Iowa River, and failure to identify two outfalls – one from the oil water separator and one from the sediment trap;
- b. Failure to adequately describe controls for preventive maintenance, good housekeeping measures, stormwater management and sediment and erosion prevention, and a schedule for their implementation, as required by Part III.C.4.B.(3) through (7) of GP #3, with regard to the sediment trap basin, the oil/water separator, the Iowa River buffer, and sediment and silt management; and
- c. Failure to amend the 2009 SWPPP, as required by Part III.C.3. of GP #3, to address any change in design, construction, operation, or maintenance, which has a significant effect on the potential to discharge pollutants, or to address any controls that are ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activities.

35. Respondent's failure to develop an adequate SWPPP and to amend the SWPPP to address controls that had proven to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity are violations of the terms and conditions of its Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2
Failure to Develop and Implement Appropriate Controls

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

37. Part III.C. of GP #3 requires development and full implementation of the facility's SWPPP concurrent with beginning operations at the facility.

38. Part III.C.4.B. of GP #3 requires the facility to develop and implement storm water management controls appropriate to the facility to address identified potential sources of pollutants at the facility, as further detailed in Part III.C.4.B.(1) through (10) of the Permit.

39. The EPA Inspector observed the Facility's stormwater management controls, including structural controls and best management practices, and collected documentation from Respondent regarding SWPPP implementation. Discharges from the Facility's sediment trap and the oil/water separator each flow through a wooded area toward Muddy Creek. On the date of the inspection, the inspector did not observe Muddy Creek to determine whether the discharge

from either source had reached Muddy Creek. The information collected during the Inspection indicates that:

- a. The SWPPP describes placement and preventative maintenance of a buffer between the stockpile area and the Iowa River, however, stockpiled material was pushed against the berm along the Iowa River;
- b. The sediment trap was near full capacity and overflow from the trap was being diverted to a wooded area, and the sediment trap is in an area prone to flash flooding from off-site sources;
- c. There was erosion present at the oil/water separator behind the fuel station and Outfall 002; this caused stormwater to bypass Outfall 002 and flow around the riser into the wooded area;
- d. The sediment trap and oil/water separator are unidentified outfalls and were not being managed by the Respondent; and
- e. Poor housekeeping practices resulted in at least two oil drums being placed outside of secondary containment structures in the main plant/washer area, accumulation of sediment within the mobile fueler parking area, filter socks out of place at the sediment trap, and a pile of sand pushed against and on top of the concrete berm between the Facility's operating area by the scale house and the Iowa River.

40. Based on observations documented during the Inspection, as described above, review of information provided by the Facility, and other relevant information, the EPA finds that Respondent failed to fully implement storm water management controls appropriate to the Facility to address identified potential sources of pollutants at the Facility, as required by Part III.C. of GP #3.

41. Respondent's failure to implement adequate stormwater management controls 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 3
Failure to Conduct Stormwater Monitoring

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

43. Part V.B. of GP #3 requires monitoring of storm water discharges for specific facilities that have storm water discharges associated with certain activities, including rock crushing plants.

44. Part V.B.1., applicable to rock crushing plants, requires that a minimum of one sample be collected annually from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable storm event.

45. The EPA Inspector reviewed Respondent's monitoring data for 2016, 2017, and 2018. The information collected during the Inspection indicates that at the time of the inspection, all facility monitoring data for 2016, 2017 and 2018 was for Outfall 003, which is quarry pit water and is covered under GP #5 as an industrial wastewater discharge. There was no monitoring data provided for stormwater monitoring at Outfall 001 or Outfall 002, as required by GP #3.

46. Based on observations documented during the Inspection, as described above, review of information provided by the Facility, and other relevant information, the EPA finds that Respondent failed to monitor stormwater Outfalls 001 and 002, as required by Part V.B.1. of GP #3, from 2016 through the date of the Inspection. Respondent expressed a mistaken belief that monitoring Outfall 003, as required by GP #5, provided substantially identical effluent monitoring data for Outfalls 001 and 002 under GP #3.

47. Respondent's failure monitor 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).

48. As alleged by the EPA above, and pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted pursuant to 40 C.F.R. § 19.4, for violations that occurred after November 2, 2015, where penalties are assessed on or after February 6, 2019, Respondent is liable for civil penalties of up to \$21,933 per day for each day during which the violation continues, up to a maximum of \$54,833.

CONSENT AGREEMENT

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

50. 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 the Consent Agreement/Final Order.

51. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

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

53. Respondent and Complainant each agree to resolve 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.

54. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

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

56. 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.

57. Respondent certifies by signing this Consent Agreement/Final Order that Respondent is currently in compliance with all requirements of NPDES Permit IA-1159-0955 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its applicable regulations.

58. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

Penalty Payment

59. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **THIRTY-THREE THOUSAND, FIVE HUNDRED DOLLARS (\$33,500)** pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

60. Respondent shall pay the penalty identified in Paragraph 59 by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number **CWA-07-2019-0254** to:

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

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

61. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to the following:

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

and

Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

62. 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.

63. 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

64. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this 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.

65. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 57 of this Consent Agreement/Final Order.

66. Nothing contained in this Consent Agreement/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, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

67. 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 collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

68. 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

69. 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.

70. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 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.

71. The state of Iowa 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).

72. 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.

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

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For the Complainant, United States Environmental Protection Agency, Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Patricia Gillispie Miller
Office of Regional Counsel

For the Respondent, RPC Holdings, Inc.:

Date

11/22/19

Signature

Name

Title

Thomas P. Scott
President & CEO

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

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by email to Respondent:

Todd A. Scott
RPC Holdings, Inc.
3273 Dubuque Street NE
PO Box 2266
Iowa City, Iowa 52244-2266
tscott@riverproducts.com

Copy by email to Attorney for Complainant:

Patricia Gillispie Miller
U.S. Environmental Protection Agency - Region 7
miller.patriciag@epa.gov

Copy by email to the Iowa Department of Natural Resources:

Deborah Quade
IDNR Field Office 6 Supervisor
deborah.quade@dnr.iowa.gov

Date

Lisa Haugen
Hearing Clerk, Region 7