UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	Docket No. CWA-07-2013-0019
	)	
SOUTHEAST MISSOURI STONE COMPANY,	)	
	)	COMPLAINT and
	)	CONSENT AGREEMENT/
	)	FINAL ORDER
Respondent,	)	
	)	
Proceedings under Section 1319(g) of the Clean Water Act, 33 U.S.C. § 1319(g)	)	

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Southeast Missouri Stone 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) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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, 40 C.F.R. Part 22.

2. This Complaint and Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

3. 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 Water, Wetlands and Pesticides Division of EPA Region 7 (Complainant).

4. Respondent is Southeast Missouri Stone Company, a corporation incorporated under the laws of the state of Missouri and authorized to conduct business in Missouri.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the "waters of the United States," which are defined at 40 C.F.R. § 122.2 to include intrastate rivers and streams and tributaries thereto.

11. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

12. 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 to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

13. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

14. 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.

15. 40 C.F.R. § 122.26(b)(14)(iii) defines "stormwater discharge associated with industrial activity," in part, to include facilities classified as Standard Industrial Classification 1422 (Crushed and Broken Limestone) and 1442 (Construction Sand and Gravel).

16. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

17. The MDNR issued a General Permit for the discharge of stormwater under the NPDES, General Permit MO-G49. This General Permit became effective on October 6, 2011, and will remain effective through October 5, 2016. The General Permit governs stormwater discharges from limestone and other rock quarries as well as the concrete, glass, and asphalt industries.

18. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

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

20. At all times relevant to this action, Respondent Southeast Missouri Stone Company was the owner and/or operator of the Lodi Quarry facility which is a 272-acre limestone quarry located at the crossing of County Road 213 and Highway 67 near Lodi, Missouri. Mining on this site ceased in 2008; current activities on the site consist of sales of existing stockpiles of limestone aggregate. The facility operates under SIC codes 1422 and 1442.

21. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's facility and flow south into an unnamed tributary to Bennett Creek. The runoff and drainage from Respondent's facility are "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

22. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. The Site has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(iii), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. Respondent discharged pollutants into an unnamed tributary to Bennett Creek, which is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

25. 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).

26. Respondent's discharge of pollutants 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.

27. Respondent applied for and was issued NPDES permit coverage under the General Permit described in Paragraph 17 above. MDNR issued Respondent NPDES permit number MO-G491035 on October 17, 2011.

28. On April 12, 2012, an EPA representative performed an Industrial Stormwater Compliance Evaluation Inspection (hereafter "the EPA 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 management of stormwater at the site in accordance with its NPDES permit and the CWA. The inspector reviewed Respondent's records related to its NPDES permit and observed the quarry facility. At the conclusion of the EPA inspection, Respondent was issued a Notice of Potential Violation indicating that the inspection found that the facility had failed to comply with its NPDES permit.

FINDINGS OF VIOLATION

Failure to Implement Storm Water Pollution Prevention Plan (SWPPP)

29. The facts stated in Paragraphs 19 through 28 above are herein incorporated.

30. Condition 2. of the Other Requirements section of Respondent's NPDES permit

requires Respondent to develop a SWPPP document to be implemented upon permit issuance.

31. Condition 2.(d) of the Other Requirements section of Respondent's NPDES Permit states that Respondent's SWPPP must include a schedule for monthly site inspections and a brief written report. The inspections must include observation and evaluation of BMP effectiveness, deficiencies, and corrective measures that will be taken. Deficiencies requiring minor repairs must be corrected within seven days and MDNR must be notified by letter of these corrections. Inspection reports must be kept on site with the SWPPP.

32. Section 4.2 of Respondent's SWPPP states that monthly site inspections are required.

33. The EPA inspection referenced in Paragraph 28, above, revealed that Respondent failed to conduct monthly site inspections for the months of November 2011, December 2011, January 2012, February 2012, and March 2012.

34. Condition 2. of the Other Requirements section of Respondent's NPDES permit requires Respondent to select, install, use, operate, and maintain the BMPs prescribed in the SWPPP.

35. Section 3.1 of Respondent's SWPPP identifies staked straw bales, silt fences, berms, culverts, and drainage ditches as BMPs for the stormwater pollutant sources of sediment and aggregate stockpiles.

36. Condition 4.(b) of the Other Requirements section of Respondent's NPDES permit states that Respondent shall provide sediment and erosion control sufficient to prevent pollution to waters of the state as a minimum BMP that must be implemented at the facility.

37. The EPA inspection referenced in Paragraph 28, above, revealed that Respondent failed to maintain BMPs that would prevent sediment and aggregate from entering the unnamed tributary to Bennett Creek. Specifically, the inspector observed erosion and runoff that discolored the ground to a reddish-brown color starting at the northeast section of the old asphalt plant location and continuing south into the unnamed tributary to Bennett Creek. The inspector also observed erosion evidenced by ground discoloration at the north section of the old staging area leading to the site's main gate and leaving the site. Finally, the inspector observed that runoff caused significant amounts of gravel to enter the unnamed tributary from the southeast section of the storage pile. The creek bed was covered in gravel for a distance of approximately 320 yards and reached a depth of 12 inches in some areas.

38. Respondent's failure to conduct site inspections at the required frequency and maintain the required BMPs are failures to implement the SWPPP and violations of Respondent's NPDES permit, and as such, violate Sections 301(a) and 402(p) of the CWA, 33

U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

39. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 49 below.

CONSENT AGREEMENT

40. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

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

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

43. Respondent waives any right to contest the allegations set forth in this Consent Agreement/Final Order and its right to appeal this Consent Agreement and the accompanying Final Order.

44. 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.

45. 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.

46. 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.

47. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311 and 1342.

48. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 47 above, of this Consent Agreement/Final Order.

49. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a penalty of $29,363 as set forth in Paragraph 1 of the Final Order.

50. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

Reservation of Rights

51. 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.

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

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Nine Thousand, Three Hundred and Sixty-Three dollars ($29,363) within thirty calendar days of the effective date of this Final Order.

2. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2013-0019 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and to:

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

3. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on 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 and interest thereon.

4. 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.

Parties Bound

5. This Final Order portion of 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 directors, officers, employees, contractors, 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.

General Provisions

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

7. Complainant reserves the right to take enforcement action against Respondent for

any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement/Final Order.

8. This Order 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 the 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.

9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. 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.

11. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy — Date 8/21/13
Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Erin Weekley — Date 8/21/13
Erin Weekley
Office of Regional Counsel

RESPONDENT:
SOUTHEAST MISSOURI STONE COMPANY

Daniel Grier
Name (print)

6/28/2013
Date

Signature

Regional Mgr
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

8-26-13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

Mike Martin
Area Manager, Southeast Missouri Stone Company - Lodi Quarry
P.O. Box 880
114 South Silver Springs Road
Cape Girardeau, Missouri 63701,

CSC – Lawyers Incorporating Service Company
Registered Agent, Southeast Missouri Stone Company
221 Bolivar Street
Jefferson City, Missouri 65101,

Charles Efflandt
Foulston Siefkin LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, Kansas 67206-4466,

and First Class Mail to:

Gary Gaines
Southeast Regional Office
Missouri Department of Natural Resources
2155 North Westwood Boulevard
Poplar Bluff, Missouri 63901.

Dated this 27 th day of August, 2013.

Kathy Robinson
Name