



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 20 2013

OVERNIGHT

Mr. W. M. Poling
Manager Engineering
ABC Coke
Post Office Box 10246
1000 Main Street
Birmingham, Alabama 35202

Re: Administrative Compliance Order on Consent CWA-04-2013-4762
ABC Coke Division – The Drummond Company
National Pollutant Discharge Elimination System Permit No.: AL0003417
Birmingham, Alabama

Dear Mr. Poling:

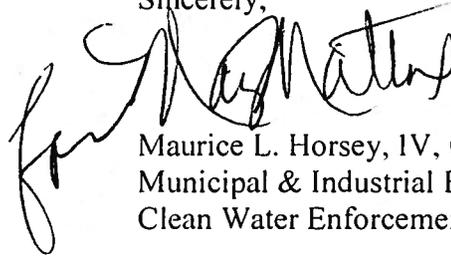
Enclosed please find the proposed Administrative Compliance Order on Consent (AOC), Docket No.: CWA-04-2013-4762, which is being issued to the ABC Coke Division of the Drummond Company, by the U.S. Environmental Protection Agency Region 4. This AOC addresses permit violations of National Pollutant Discharge Elimination System Permit No.: AL0003417, which occurred at the ABC Coke Division site in Birmingham, Alabama.

If you agree to the terms of this AOC, please sign and return it within five days of receipt of this letter to the following address:

U.S. Environmental Protection Agency, Region 4
Clean Water Enforcement Branch
Water Protection Division
Attn: Ms. Alenda Johnson
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

The AOC will become effective upon the date you receive a copy of the document signed by the Director of the Water Protection Division. If you have any comments or questions regarding this matter, please contact Ms. Kavita K. Batra, Associate Regional Counsel at (404) 562-9697 or Ms. Johnson, Enforcement Officer, at (404) 562-9761.

Sincerely,

A handwritten signature in black ink, appearing to read "Maurice L. Horsey, IV". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Maurice L. Horsey, IV, Chief
Municipal & Industrial Enforcement Section
Clean Water Enforcement Branch

Enclosure

cc: Mr. Blake D. Andrews
Drummond Company, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) ADMINISTRATIVE
) ORDER ON CONSENT
)
ABC COKE DIVISION)
THE DRUMMOND COMPANY)
BIRMINGHAM, ALABAMA) DOCKET NO. CWA-04-2013-4762
)
PROCEEDING UNDER SECTION)
309(a) OF THE CLEAN WATER ACT,)
33 U.S.C. § 1319(a))
NPDES PERMIT NO. AL0003417)

ADMINISTRATIVE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency, Region 4 ("EPA") finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings are made and this Administrative Order on Consent is issued pursuant to the authority vested in the Administrator of the EPA, by Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Region 4 Water Protection Division.

II. EPA FINDINGS

3. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to

specific terms and conditions. The EPA has granted the State of Alabama through the Alabama Department of Environmental Management (“ADEM”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

5. ABC Coke Division is a part of Drummond Company, Inc. (“Respondent”), which is a corporation duly organized and existing under the laws of the State of Alabama and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all times relevant to this action, the Respondent owned and/or operated a Biological Treatment Facility (“BTF”), located in Jefferson County at Railroad Street in Birmingham, Alabama.

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into the navigable waters of the United States, except in compliance with certain sections of the CWA.

8. The wastewater treatment operations, including the BTF and any other specified measures for control of pollutant and discharges from the ABC manufacturing plant, are regulated under NPDES Permit No. AL0003417 (“Permit”) that went into effect on April 1, 2009, and the Permit will expire on March 31, 2014.

9. The Permit authorizes discharge of treated process wastewater and stormwater from coke making operations through outfall DSN 001 and discharge of stormwater runoff from the coal yard through outfall DSN 002. Monitoring requirements in the Permit applicable to DSN 002 require Respondent to monitor constituents that would indicate a discharge of any process related pollutants from the coal yard.

10. On August 13-16, 2012, the EPA conducted a Compliance Evaluation Inspection (“CEI”) of the BTF and the industrial site to evaluate the Respondent’s compliance with the Permit and the CWA. The CEI identified deficiencies related to preservation methods used to analyze samples, Best Management Practice deficiencies related to the stormwater controls and four non-stormwater discharges draining to the stormwater retention pond, which captures the stormwater runoff ultimately discharging through outfall DSN002. EPA found that one of those discharges was not specifically included in the Permit, and the others were not discharging in accordance with the terms of the Permit.

11. On May 10, 2013, the EPA sent a Letter of Concern (“LOC”), issued under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to the Respondent regarding alleged deficiencies identified during the inspection. The LOC also alleged two ammonia nitrogen effluent limits exceedances for the period covering January 1, 2010, through December 31, 2012. The LOC requested information on corrective actions planned or taken to address the deficiencies and effluent limit exceedances.

12. On June 17, 2013, the Respondent provided a response to the LOC. The response addressed all of the deficiencies with the exception that it stated that the Respondent believed the NPDES application allowed for these types of non-stormwater discharges and that three of these

discharges were reflected as “miscellaneous” discharges in Respondent’s application for the Permit. The fourth discharge reflected a release from a Jefferson County pipeline that has been repaired, such that the release has ceased.

13. On July 16, 2013, the EPA concluded its review of the LOC response and the Respondent’s permit application and determined that Part V. of form 2F, which is entitled *Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity*, contains a certification that all non-stormwater discharges should be identified in either form 2C for discharge of wastewater or 2E for discharge of noncontact process water, and no such non-stormwater discharges are so identified on either of those forms.

14. Based on the above, EPA has determined that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), in that the Respondent has discharged wastewater to a location not authorized by an NPDES permit.

15. The EPA has determined that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Permit, by failing to comply with Part I.A. and Part II.E.2.a of the Permit.

16. To resolve this dispute, Respondent submitted an application for an amendment to the Permit that would clearly reflect that the continuing discharges to the stormwater control system are authorized.

17. On August 20, 2013, the Alabama Department of Environmental Management sent a Draft Permit modification to the Respondent for review that, if it becomes final, will authorize the three non-stormwater discharges through outfall DSN 002.

18. The Draft Permit will not become final until EPA and the public have commented on the Draft Permit, ADEM considers any comments, and makes a decision to issue a final permit, to deny the permit application or to modify the Draft Permit.

III. ORDER ON CONSENT

19. Based on the foregoing EPA FINDINGS and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED AND RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

- A. If ADEM does not issue the Draft Permit due to any deficiencies identified by ADEM, either with the permit application itself or otherwise, within thirty (30) days from when Respondent receives notification from ADEM that the application is deficient, Respondent shall submit to ADEM any and all additional information necessary to address the deficiencies identified by ADEM. If ADEM issues a final Permit that does

not authorize the discharges of any of the waste streams, as they are currently described in the Draft Permit, or if ADEM does not grant the permit modification, then within thirty (30) days from the date of ADEM's decision, Respondent shall immediately cease any discharges that are not authorized by Respondent's NPDES Permit, as issued by ADEM.

- B. Within thirty (30) days of the effective date of this Order on Consent, the Respondent shall submit a copy of the revised BMP Plan to EPA and ADEM.
- C. Within thirty (30) days of the effective date of this Order on Consent, the Respondent shall provide a description of the method utilized for routine cleaning and a schedule for which the cleaning of the stormwater catch basin will take place.
- D. Within sixty (60) days of the effective date of this Order on Consent, the Respondent shall submit an engineering report assessing all stormwater runoff and process wastewater sources that contributed to the stormwater collection system (catch basin & retention pond). This assessment shall include an engineer calculation of the design storm, total hydraulic capacity as well as the inorganic/organic loading capacity of the stormwater treatment system. The engineer report shall be certified by Professional Engineer and submitted to EPA and ADEM.
- E. Every month after the effective date of this Order on Consent, and continuing until all corrective actions have been completed, the Respondent shall submit to the EPA a written report containing information about the status and progress of the permit modification. The report shall also include a description of actions implemented to prevent future recurrence. The Respondent shall submit the report to the EPA within fifteen (15) days of the end of each month. The first monthly report shall be due following the end of the month during which this Order on Consent becomes effective.

20. All reports, notifications, documentation, and submittals required by this Order on Consent shall be signed by a duly authorized representative of ABC Coke Division as specified by 40 C.F.R. §§ 122.22(b)(2) and (d) and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21. All reports, notifications, documentation and submittals required by this Order on Consent shall be sent by certified mail or its equivalent to the following addresses:

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
ATTN: Alenda Johnson
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Glenda L. Dean, Chief
Water Division
Alabama Department of Environmental Management
P.O. Box 301463
Birmingham, Alabama 36130 -1463

IV. GENERAL PROVISIONS

22. The Respondent's compliance with this Order on Consent does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, or with Respondent's NPDES permit. The Respondent shall remain solely responsible for compliance with the terms of the CWA and this Order on Consent and its NPDES permit.

23. Failure to comply with the requirements herein shall constitute a violation of this Order on Consent and the CWA, and may subject Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

24. This Order on Consent shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state or local permit. Compliance with this Order on Consent shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

25. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any remedies available to it under law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief (including injunctive relief) under the CWA or any other federal or state statute, regulation or permit. EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order on Consent and to enforce this Order on Consent.

26. This AOC is entered into voluntarily by Respondent to address and remedy the violations asserted herein by the EPA. This AOC has been negotiated by the parties in good faith.

27. This Order on Consent applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

28. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this Order on Consent.

29. For purposes of this Order on Consent, Respondent admits to the jurisdictional allegations set forth herein but neither admits nor denies the EPA's Findings of Fact, set forth above. The EPA asserts that the facts stated herein are true and substantiated.

30. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

31. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), EPA has sent a copy of this Order on Consent to the State of Alabama.

32. The provisions of this AOC shall be deemed satisfied upon a determination by the EPA that Respondent has fully completed and implemented the actions required by this AOC.

V. EFFECTIVE DATE

33. This Order on Consent shall become effective upon Respondent's receipt of the fully executed Order on Consent.

FOR THE RESPONDENT:

ABC Coke Division of Drummond Company, Inc.

Title _____

Date: _____

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

James D. Giattina
Director
Water Protection Division

Date: _____

