

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:)	DOCKET NO. CWA-09-2017-0004
)	
Security Paving Company, Inc.)	COMPLAINT, CONSENT AGREEMENT
8960 Bradley Avenue)	AND [PROPOSED] FINAL ORDER
Sun Valley, CA 91352)	
)	<i>Class II Administrative Penalty Proceeding</i>
)	<i>under Section 309(g) of the Clean Water Act,</i>
Respondent.)	<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 II civil administrative penalty proceeding under Sections 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 9, who in turn has delegated this authority to the Assistant Director of the Enforcement Division, hereinafter “Complainant.”
3. Respondent is Security Paving Company, Inc. (“Security Paving” or “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 and CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for storm water discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(ii) defines storm water discharges associated with industrial activity to include activities classified under SIC Major Group 32 (Stone, Clay, Glass, And Concrete Products), which includes SIC Code 3295 (Minerals and Earths, Ground or Otherwise Treated).
8. Pursuant to CWA Section 402(p)(4), 33 U.S.C. § 1342(p)(4), dischargers of storm water associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
9. 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 (“State Water Board”) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Storm Water 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.”
10. 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 II 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 \$20,965 per day of violation, not to exceed \$262,066 in total.

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

11. Respondent is a California corporation and therefore, a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5). Respondent engages in the crushing, grinding, pulverizing and preparation of miscellaneous nonmetallic minerals at its facility located at 8960 Bradley Avenue, Sun Valley, California (referred to in this CA/FO as “the Facility.”)
12. Respondent has operated the Facility since at least 2008, on an exact date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 3295 (Minerals and Earths, Ground or Otherwise Treated), and is 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)(ii).
13. Storm water runoff from the Facility discharges from the southwestern corner of the Facility’s entrance/exit on Bradley Avenue that connects to the County of Los Angeles municipal separate storm sewer system (MS4) at the intersection of Bradley Avenue and Tuxford Street. The Facility discharge point on Bradley Avenue and the County of Los Angeles MS4 are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
14. Storm water runoff from the Facility is a “storm water discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(ii).

15. Storm water discharges from the Facility's industrial activities include discharges of recycled crushed roadway materials (e.g., dirt, rock, and sand), and therefore contain "pollutants," as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
16. Discharges from the Facility enter the County of Los Angeles MS4 and discharge into Tujunga Wash, a tributary to the Los Angeles River, which flows to the Pacific Ocean. Tujunga Wash, the Los Angeles River, 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.
17. Respondent's discharge of pollutants in storm water 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).
18. On July 11, 2012, and again on August 25, 2015, Respondent obtained General Permit coverage from the State Water Board authorizing discharges of storm water associated with industrial activity from the Facility, and was assigned Waste Discharger Identification #4 19I026031.
19. On December 10, 2015, EPA Region 9 representatives inspected the Facility to evaluate Respondent's compliance with the General Permit. On May 4, 2016, the EPA provided its inspection report (the "inspection report") to Respondent.
20. During the December 10, 2015 inspection, the EPA inspectors made the following observations regarding Respondent's compliance with the General Permit's requirements pertaining to the Facility's storm water pollution prevention plan (SWPPP):
 - a. The SWPPP had not been certified and signed as required by Section X.B.2 of the General Permit, which required Dischargers to implement their SWPPPs by July 1, 2015, and to certify and submit their SWPPP via the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) website within 30 days whenever the SWPPP contains significant revisions.
 - b. The SWPPP's Site Map did not include several informational items required by Part X.E.3 of the General Permit, *i.e.*, it did not specifically identify: The Facility's perimeter, drainage areas, areas of soil erosion, points of discharge (the unidentified potential discharge point at the Facility's northern corner); sampling locations (the unidentified potential discharge point at the Facility's northern corner); impervious areas (scale or scale house, as well as some areas of the Facility incorrectly identified in the SWPPP as paved); locations of directly exposed materials (e.g., the aggregate base stockpile and concrete waste rubble stockpile); storage areas/storage tanks (the storage areas for lubricants, grease, and other automotive fluids); shipping and receiving areas (location where the asphalt raw material is received and offloaded at the Facility); waste treatment/disposal areas (two disposal bins located at the Facility's west-central perimeter); and dust or particulate generation areas (multiple areas of the Facility).
 - c. The SWPPP did not adequately describe the locations where industrial materials handled at the Facility are stored, received, shipped, and handled, as required by Part X.F of the General Permit.
 - d. The SWPPP did not adequately describe each industrial process at the Facility, as required by Part X.G.1.a of the General Permit, *e.g.*, the SWPPP did not address in its list

of industrial activities and materials (SWPPP Table 2.1) the two uncovered disposal bins located the Facility's western-central perimeter.

- e. The SWPPP did not adequately describe each material and handling area at the Facility, including the type, characteristics, and quantity of industrial materials handled or stored, as required by Part X.G.1.b of the General Permit. The Facility's SWPPP did not include sufficient information in SWPPP Table 2.1 regarding areas of the Facility where materials are handled.
- f. The SWPPP did not accurately describe all industrial activities that generate a significant amount of dust or particulates that may be deposited within Facility boundaries, as required by Section X.G.1.c of the General Permit. The SWPPP at Table 2.1 states that the storm water exposure pathway for the outdoor process operations flows inward toward a sump. However, EPA inspectors did not locate or identify a sump on-site during the inspection, and also observed that a sump was not depicted on the Facility site map.
- g. The SWPPP did not include a description of the Facility locations where soil erosion may be caused by industrial activity or contact with storm water, as required by Section X.G.1.f of the General Permit. EPA inspectors observed that Respondent had not identified erosion of uncontained stockpiles as a potential pollution source at the Facility in the SWPPP.
- h. The SWPPP did not include a narrative assessment of potential pollutant sources in the SWPPP as required by Section X.G.2.a of the General Permit.

21. During the December 10, 2015 inspection, the EPA inspectors made the following observations regarding Respondent's failure to implement Best Management Practices (BMPs) at the Facility, including Respondent's failure to:

- a. Implement good housekeeping practices as required by Part X.H.1 of the General Permit, including:
 - i. Observation of all outdoor areas associated with industrial activity and cleaning and disposal of any identified debris, waste, spills, tracked materials, or leaked materials, as required by Part X.H.1.a.i of the General Permit. EPA inspectors observed various trash and debris in the north-central outdoor areas of the Facility at a potential discharge point that was unidentified in the Facility SWPPP;
 - ii. Minimization or prevention of material tracking, as required by Part X.H.1.a.ii of the General Permit. EPA inspectors observed accumulated sediment at the Facility's entrance and evidence of a release of sediment from the Facility onto Bradley Avenue; and
 - iii. Minimization of dust generated from industrial materials or activities, as required by Part X.H.1.a.iii. EPA inspectors observed accumulated dust and sediment at various locations throughout the Facility, and that existing BMPs (e.g., a sprinkler system in the Facility's central areas and an on-site sweeper truck) appeared to be improperly implemented and/or insufficient in reducing dust and particulate matter.

- b. Engage in preventative maintenance at the Facility, including the establishment of procedures for prompt maintenance and repair of equipment, and maintenance of systems when conditions exist that may result in the development of spills or leaks, as required by Part X.H.1.b.iv of the General Permit. EPA inspectors observed oil staining on the impervious surface at the eastern area of the Facility to the east of the scale house/office, indicating Respondent had not implemented procedures for prompt maintenance and repair of equipment at the time of inspection.
- c. Establish procedures and/or controls to minimize spills and leaks, as required by Part X.H.1.c.i of the General Permit. Specifically, EPA observed multiple uncontained and uncovered 5-gallon drums of hydraulic oil at the west-central perimeter of the Facility; observed an uncontained drum of grease and aerosol cans stored at the west-central perimeter of the Facility without overhead coverage; and observed staining in the vicinity of the drum. In addition, spill kits were not available on-site.
- d. Identify and train appropriate spill and leak response personnel, as required by Part X.H.1.c.iv of the General Permit. EPA inspectors observed that Facility personnel provided in the SWPPP's Facility Contacts section had not received training on Facility spill and leak response procedures. In addition, EPA inspectors observed evidence of past spills and leaks at the Facility and that Respondent had not maintained training documents regarding spill and leak prevention on-site.
- e. Prevent or minimize handling of industrial materials or wastes that can be readily mobilized by contact with storm water during a storm event, as required by Section X.H.1.d.i of the General Permit. EPA inspectors observed uncontained dirt and rock stockpiles that created the potential for contaminants to be mobilized offsite in a storm event.
- f. Cover industrial waste disposal containers and industrial material storage containers that contain industrial materials when not in use, as required by Part X.H.1.d.iii of the General Permit, *i.e.*, an uncontained metal drum used for storing trash at the west-central area of the Facility.
- g. Implement effective erosion and sediment controls as required by Sections X.H.1.e.i and e.iii of the General Permit (as well as Section 3.1.5 of the Facility's SWPPP). EPA inspectors observed that Respondent had not deployed wind erosion controls at the uncontained concrete waste rubble stockpile at the central and north-central areas of the Facility; that the rubble stockpile was approximately twice as high as the perimeter wall Respondent had installed around the Facility; that gaps and holes in the wall made it ineffective to contain storm water runoff from the rubble stockpile on-site; and that there was evidence of erosion at the uncontained base stockpile located upgradient of the Facility's discharge point at the southern end of the Facility. EPA also observed a vegetative buffer at Facility's western perimeter, outside its fenceline, but that the Facility's eastern perimeter lacked any perimeter controls, and that gaps in the Facility's chain-linked fence in this perimeter area created the potential for accumulated sediment near the fence-line to be mobilized offsite during a storm event. In addition, EPA inspectors observed evidence of past sediment releases from the Facility's entrance/exit, and accumulated sediment in the curb and gutter south of the Facility's entrance/exit.

- h. Conduct proper training of all Facility personnel responsible for environmental management to implement the storm water control requirements of the General Permit, and document this training, as required by Section X.H.1.f.i and f.v of the General Permit (and as outlined in Section 3.1.6 of the Facility's SWPPP). EPA inspectors were informed by Facility personnel that they had not received training and that no storm water sampling kit was available on-site. Also, no training documentation could be located during the inspection.
- i. Develop and implement management procedures to ensure that appropriate staff implement all elements of the SWPPP, as required by Section X.H.1.g.i of the General Permit. Due to the conditions that EPA inspectors observed on-site and the lack of documentation maintained at the Facility (see subsection (j) immediately below), the discharger was not implementing the necessary management procedures at the Facility.
- j. Maintain BMP implementation records, training records, and records related to any spills and clean-up related response activities for a minimum of five years, as required by Part X.H.1.g.iii of the General Permit, specifically, Respondent did not have monthly inspection reports available for review at the time of inspection. In addition, Respondent did not have BMP implementation records, training records (as discussed above), and records relating to any spills and clean-up related response activities on-site.
- k. Implement and maintain any advanced BMPs as necessary to reduce the discharge of pollutants in storm water from the Facility that best reflects industry practice, as required by Section X.H.2.a of the General Permit. EPA inspectors observed that Respondent had not installed or deployed advanced BMPs to address storm water runoff from uncontained stockpiles of inactive equipment and debris at the Facility's southeastern area; inactive equipment and parts, including uncontained rusted parts, batteries and 5-gallon buckets of various fluids, in the Facility's southeastern corner; and uncovered and uncontained materials stored along the Facility's west-central perimeter.

22. On October 18, 2016, the EPA sent Respondent an information request pursuant to CWA Section 308, 33 U.S.C. § 1318. On January 31, 2017, Respondent responded to the EPA's information request with documentation and a certification that Respondent had brought the Facility into compliance with the CWA and the General Permit.

23. Between January 31, 2012 and January 31, 2017, at least nineteen days with rainfall in excess of 0.5 inches were recorded at the Burbank Glendale Pasadena Airport. Upon information and belief, each of these nineteen rainfall events resulted in a discharge of storm water from the Facility to the County of Los Angeles MS4 and waters of the United States.

IV. ALLEGED VIOLATIONS

24. Between January 31, 2012 and January 31, 2017, Respondent violated CWA Section 301, 33 U.S.C. § 1311, on at least nineteen days by discharging storm water associated with industrial activity from a point source into waters of the United States while not in compliance with an NPDES permit as described in paragraphs 20 and 21 above. Further, Respondent violated CWA Section 402, 33 U.S.C. § 1342, each day it failed to comply with the General Permit.

V. ADMINISTRATIVE PENALTY

25. 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 sixty-four thousand, two hundred and nineteen dollars (**\$64,219**) within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

26. 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 particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

27. 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.
28. 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

29. 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.
30. 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 CA/FO's Effective Date. 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

31. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, 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

32. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
 - b. admits 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

33. 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.
34. 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

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

X. EFFECTIVE DATE AND TERMINATION

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

XI. PUBLIC NOTICE

37. 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.

38. 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 Respondent Security Paving Company, Inc.:

/s/

August 14, 2017

Name

Date

General Counsel

Title

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

/s/

August 23, 2017

Kathleen H. Johnson, Director
Enforcement Division
U.S. EPA Region 9

Date

Of Counsel:

Rich Campbell
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

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_____)	<i>22.13(b) and 22.18</i>

The United States Environmental Protection Agency Region 9 (EPA) and Security Paving Company, Inc. (Respondent), having entered into the foregoing Consent Agreement, and the EPA having duly publicly noticed the proposed Consent Agreement and Final Order,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. CWA-09-2017-0004) be entered; and
2. Respondent pay an administrative civil penalty of \$64,219 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order is effective on the date that it is filed with the Regional Hearing Clerk. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

Regional Judicial Officer, Region 9
U.S. Environmental Protection Agency

Date: _____