

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	Proceeding under Section 309(g) of the Clean Water Act
Rockydale Quarries Corporation	:	Docket No. CWA-03-2018-0119
Respondent.	:	FINAL ORDER

FINAL ORDER

Complainant, the Director of the Water Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, Rockydale Quarries Corporation, have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement 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 of Practice), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the CWA, 33 U.S.C. Section 309(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***TWENTY SIX THOUSAND SEVEN HUNDRED DOLLARS (\$26,700.00)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5).

Date

Dominique Lueckenhoff, Acting Director
Water Protection Division
U.S. EPA Region III

CERTIFICATE OF SERVICE

I certify that the enclosed Consent Agreement and Final Order were delivered to the following persons:

Delivery by Certified Mail Return Receipt Requested:

Mr. J. Kenneth Randolph, President
Rockydale Quarries Corporation
2343 Highland Farm Road, NW
Roanoke, VA 24017

JKR

Delivery by hand (original and one copy):

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: _____

Bonnie A. Pugh
Senior Assistant Regional Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	
	:	Docket No. CWA-03-2018-0120DN
	:	
Rockydale Quarries Corporation	:	
4754 Old Rocky Mount Road	:	
Roanoke, VA 24014	:	ADMINISTRATIVE ORDER
	:	ON CONSENT
	:	
	:	
Respondent.	:	

I. STATUTORY AND REGULATORY BACKGROUND

1. The United States Environmental Protection Agency (“EPA”) has made the following findings of fact and issues in this Administrative Order on Consent (“Consent Order”) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.
2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.
3. Respondent, Rockydale Quarries Corporation (Rockydale), has agreed to the issuance of this Consent Order.
4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

5. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* 33 U.S.C. § 1311.
6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. sections 122.2 and 122.26 provide that, with some exceptions not relevant here, industrial storm water discharges and stormwater discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
7. "Storm water discharge associated with industrial activity" is defined at 40 C.F.R. § 122.26(b)(14).
8. An NPDES permit is required for discharges of storm water associated with industrial activity. Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a),(c); 40 C.F.R. § 122.21.
9. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), facilities classified as, *inter alia*, Standard Industrial Classification Group 14, including Industry Group 142 (Crushed and Broken Stone, including Riprap) are engaged in "industrial activity" within the meaning of Section 402(p) of the Act and 40 C.F.R. § 122.
10. The Commonwealth of Virginia has been approved by EPA to administer the NPDES program in the Commonwealth of Virginia.
11. Pursuant to the authority of the Act, the NPDES program approval, and the Virginia State Water Control Law, Virginia issued Permits to all six facilities subject to this Order.
12. The 2009 Virginia Pollutant Discharge Elimination System ("VPDES") General Permit for Nonmetallic Mineral Mining, the 2009 VPDES General Permit for Industrial Activity Stormwater Discharges, the 2014 VPDES General Permit for Nonmetallic Mineral Mining, and the 2014 VPDES General Permit for Industrial Activity Stormwater Discharges ("VPDES Permits") authorize the discharge of stormwater in accordance with the provisions of the VPDES Permits. The VPDES Permits require a permittee to comply with all conditions in the Permit.

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

13. Rockydale is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). Rockydale owns and operates eight plant locations across the Commonwealth of Virginia, six of which Complainant identified violations of the applicable VPDES Permits.
14. ***Jack's Mountain Quarry:*** At all times relevant to this Order, Respondent has owned and/or operated a quarry at or near 1535 Jacks Creek Road, Glade Hill, VA 24092.

15. The Jack's Mountain Quarry discharges stormwater into Jacks Creek, which is a tributary to Pigg River, which is a tributary to the Roanoke River, which is a water of the United States.

16. The discharges of stormwater from Jack's Mountain Quarry were authorized by the 2009 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840050, effective July 1, 2009 and the 2014 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840050, effective July 1, 2014.

17. ***Flatrock Quarry:*** At all times relevant to this Order, Respondent has owned and/or operated a Quarry at or near 477 Limestone Road, Quicksburg, VA 22847.

18. The Flatrock Quarry facility discharges stormwater into an unnamed tributary to the Holman Creek, which is a tributary to the North Fork Shenandoah River, which is a water of the United States.

19. The discharges of stormwater from the Flatrock Quarry were authorized by the 2009 VPDES General Permit for Nonmetallic Mineral Mining under permit number VAG8400443, effective July 1, 2009 and the 2014 VPDES General Permit for Nonmetallic Mineral Mining under permit number VAG8400443, effective July 1, 2014.

20. ***Starkey Lime Plant:*** At all times relevant to this Order, Respondent has owned and/or operated a lime plant at or near 5925 Starkey Road, Roanoke, VA 24018.

21. The Starkey Lime Plant facility discharges stormwater into Back Creek, which is a tributary to the Roanoke River, which is a water of the United States.

22. The discharges of stormwater from the Starkey Lime Plant were authorized by the 2009 VPDES General Permit for Industrial Activity Stormwater Discharges, under permit number VAR052303, effective July 1, 2009, the 2014 VPDES General Permit for Industrial Activity Stormwater Discharges, under permit number VAR052303, effective July 1, 2014, the 2009 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840067, effective July 1, 2009, and the 2014 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840067, effective July 1, 2014.

23. ***Charlottesville Stone Company:*** At all times relevant to this Order, Respondent has owned and/or operated a stone company at or near 2430 Rio Mills Road, Charlottesville, VA 22936.

24. The Charlottesville Stone Company facility discharges stormwater into Schroeder Branch, which empties into the South Fork of the Rivanna River, which is a water of the United States.

25. The discharges of stormwater from the Charlottesville Stone Company were authorized by the 2009 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840204, effective July 1, 2009 and the 2014 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840204, effective July 1, 2014
26. **Broadway Quarry:** At all times relevant to this Order, Respondent has owned and/or operated a quarry at or near 11261 Turleytown Road, Linville, VA 22815.
27. The Broadway Quarry discharges stormwater into Brock Creek, a tributary to Turley Creek, which is a tributary to the North Fork Shenandoah River, which is a water of the United States.
28. The discharges of stormwater from the Broadway were authorized by the 2009 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840133, effective July 1, 2009 and the 2014 VPDES General Permit for Nonmetallic Mineral Mining, under permit number VAG840133, effective July 1, 2014.
29. **Roanoke Quarry:** At all times relevant to this Order, Respondent has owned and/or operated a quarry at or near 4754 Old Rocky Mount Road, Roanoke, VA 24014.
30. The Roanoke Quarry discharges stormwater into Back Creek, and Ore Branch, both tributaries to the Roanoke River, which is a water of the United States.
31. The discharges of stormwater from the Roanoke Quarry were authorized by the 2009 VPDES General Permit for Industrial Activity Stormwater Discharges, under permit number VAR052307, effective July 1, 2009 and the 2014 VPDES General Permit for Industrial Activity Stormwater Discharges, under permit number VAR052307, effective July 1, 2014.
32. On April 8, 2014, an EPA compliance inspection team inspected the Charlottesville facility for compliance with its VPDES permit.
33. After the inspection, at the request of EPA, representatives of Rockydale provided information pertaining to VPDES permit compliance.
34. On February 9, 2016 and September 22, 2017, pursuant to Section 308 of the Act, EPA requested information and documents from Rockydale regarding compliance with the VPDES permit requirements at eight facilities, it owned and/or operated.
35. Based on the April 2014 inspection and on review of the documents provided in response to EPA's request, EPA has identified the following violations for the six (listed above) of eight facilities.

Counts 1-4: Failure to comply with the permit requirements concerning the retention of records (2009 VAG84 Part III.B.2, 2009 VAR05 Part II.B.2, 2014 VAG84 Part III.B.2, and 2014 VAR05 Part II.B.2.)

36. In response to the Section 308 request, Rockydale provided requested information from eight of its facilities related to permitted activities. The following facilities were not in compliance with permit requirements concerning the ability to find the following types of records: Discharge Monitoring Reports (DMRs), Stormwater Visual Examinations, and Comprehensive Site Compliance Evaluations.

37. ***Flatrock Quarry:*** Missing 2013 3rd quarter DMR for Outfalls 001 and 002, and missing 2014 DMR for Outfall 004.

38. ***Jack's Mountain Quarry:*** Missing the December 2015 Visual Stormwater Examination record.

39. ***Charlottesville Quarry:*** Missing the 2014 and the 2015 DMR for Outfall 002, missing the 1st quarter of 2013 Quarterly Stormwater Outfall Visual Examinations for Outfall 001, and missing all Quarterly Stormwater Outfall Visual Examinations for Outfall 002.

40. ***Broadway Quarry:*** Missing the 2014 annual Comprehensive Site Compliance Evaluation (CSCE).

Counts 5-8: Failure to comply with permit requirements concerning Comprehensive Site Compliance Evaluations (CSCE) (2009 VAG84 Part II.H.4, 2009 VAR05 Part III.E, 2014 VAG84 Part II.H.4, and 2014 VAR05 Part III.E.)

41. The following facilities were not in compliance with permit requirements concerning the generation of a CSCE.

42. ***Flatrock Quarry:*** Failure to generate a CSCE in 2013, 2014 and 2015.

43. ***Jack's Mountain Quarry:*** Failure to generate a CSCE in 2013, 2014 and 2015.

44. ***Roanoke Quarry:*** Failure to generate a CSCE in 2013, 2014 and 2015.

45. ***Starkey Lime Plant:*** Failure to generate a CSCE in 2013, 2014 and 2015.

Counts 9-10: Failure to comply with permit requirements concerning the reporting of monitoring results (2009 VAG84 Part III.C, 2009 VAR05 Part II.C, 2014 VAG84 Part III.C, and 2014 VAR05 Part II.C.)

46. The following facilities were not in compliance with permit requirements concerning submissions of DMRs to the Virginia Department of Environmental Quality (VADEQ).

47. **Broadway Quarry:** Failure to submit the 3rd quarter DMR for 2013 for Outfall 001 to VADEQ.

48. **Flatrock Quarry:** Failure to submit the 3rd quarter DMR for 2013 for Outfall 001 to VADEQ.

III. ORDER

49. The Respondent shall take all actions necessary to comply with the VPDES Permits issued for any and all operations which Respondent owns or operates, including:

- a. Respondent shall conduct monitoring as required by VPDES Permits issued for the Rockydale operations.
- b. Respondent shall maintain an updated SWPPP when benchmark monitoring is surpassed for the Rockydale operations.
- c. Respondent shall retain records as required by VPDES Permits issued for the Rockydale operations.
- d. Respondent shall conduct an Annual Stormwater NPDES Compliance Audit (the "audit"), in any operation at which Rockydale is the owner or operator, as described below.
 - i. Respondent will conduct the audit annually at each facility for the next five (5) years.
 - ii. The first audit will evaluate compliance during the calendar year of 2018 and must be completed not later than January 31st, 2019. The subsequent audits will be completed not later than January 31st of the following years, to evaluate the compliance for each preceding calendar year.
 - iii. The person(s) conducting the audit shall be adequately trained in stormwater compliance, shall have the authority to require implementation of the applicable CWA requirements for stormwater discharges and shall have the authority to take corrective actions regarding stormwater compliance at the Rockydale operation.
 - iv. The audit must review compliance with all the VPDES Permits requirements listed in Attachment A.
 - v. If a new VPDES permit is reissued, then Attachment A shall be modified by the Respondent to reflect the requirements of the new permit.
 - vi. The findings of the audit must be documented in a report as shown in Attachment A.

- vii. The audit report shall be signed by a responsible corporate officer or a duly authorized representative as defined at 40 C.F.R Section 122.22(b). The signatory shall make the following certification:

I certify under 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.

- viii. Respondent shall forward a copy of each audit report within thirty (30) days of completion of the audit to:

Chuck Schadel
Water Protection Division (3WP42)
US EPA Region III
1650 Arch St.
Philadelphia, PA 19103

- e. Respondent shall post in its own public website information on its VPDES stormwater compliance at its VPDES permitted operations. The website shall include for each covered operation: permit coverage number; the SWPPP; discharge monitoring reports (DMRs) required by the VPDES Permits; the annual comprehensive site evaluations; and any state inspections reports on NPDES compliance received by Rockydale.

IV. GENERAL PROVISIONS

50. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

51. This Consent Order does not constitute a waiver or modification of the terms or conditions of the Respondent's VPDES Permit. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit.

52. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

53. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

54. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

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

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: _____

Catharine McManus
Acting Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

For Rockydale Quarries Corporation

Date: 8/21/18

J. Kenneth Randolph
Name
PRESIDENT
Title

Attachment A

FACILITY NAME & PERMIT:	AUDIT DATE:	Calendar Year covered by the audit:	
BENCHMARK MONITORING (Describe Permit Requirement, Including Frequency)			
Time Period:			
DMRs Submitted Late (List Outfalls):			
List Outfall(s) For Monitoring Did Not Take Place For This Reporting Period:			
When Outfalls Were Monitored, But Not All Parameters Were Quantified, List The Outfall And The Corresponding Parameters That Are Missing:			
For all analytical results above the Benchmark value ranges, list the Outfall, parameter and corresponding results:			
Have Fuels, lubricants, coolants, hydraulic fluids, or other petroleum products been discharged on the ground or into surface waters ? (YES/NO)			
Have process waters been discharged to surface waters? (YES/NO)			

FACILITY NAME:	AUDIT YEAR:
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QUARTERLY VISUAL OUTFALL EXAMINATIONS				
(State whether or not each examination was completed with the date, or whether it is incomplete, or missing.)				
	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER
Outfall -				
Outfall -				
Outfall -				
Outfall				
Outfall				
Outfall				
Outfall				

FACILITY NAME:		AUDIT YEAR:	
SWPPP (State whether or not each item is complete, incomplete, or missing)			
SIGNATURE			
UPDATES, AND SIGNATURES FOR THE UPDATES Specify date and reason (e.g. high benchmark, construction/change in design, deficiency identified during routine inspection; etc) for the updates			
STAFF IDENTIFIED			
POTENTIAL POLLUTANT SOURCE ACTIVITIES			
MAP - OUTLINE OF DRAINAGE AREAS			
	Drainage Areas		
	Inventory of Exposed Materials		
	Spills & Leaks		
	Risk of Potential Pollutant Sources		
	Storage Areas		Structural Controls
	Measures & Controls		
	<i>Good Housekeeping</i>		
	<i>Preventive Maintenance</i>		
	<i>Spill Prevention</i>		
STORM WATER CONTROLS			
- Good housekeeping (including sweeping)	-	- Employee Training -	
- Preventive Maintenance	-	Record Keeping	
- Spill Prevention	-	Sediment & Erosion Control	
-	-	Management of Runoff	

FACILITY NAME:	AUDIT YEAR:			
<p>- ROUTINE INSPECTIONS (Describe Permit Requirement, Including Frequency)</p>				
<p>- (State whether or not each inspection was completed and specify date, or whether the inspection is incomplete, or missing.)</p>	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
<p>- INSPECTIONS</p> <p>-</p>				
<p>- ADDITONAL INSPECTIONS</p> <p>-</p>				

FACILITY NAME:	AUDIT YEAR:	
COMPREHENSIVE SITE COMPLIANCE EVALUATION	(State whether or not each component is complete, incomplete, or missing.)	
Date of evaluation:	Industrial Materials	
	Leaks & Spills	
	Off-site Tracking	
	Pollutants Entering Stormwater Conveyance	
	Pollutants at Outfalls	
	Review of Training	
	Unauthorized Discharges Evaluation	
	Visual & Analytical Monitoring	
	SWPPP/BMP Modifications resulting from the evaluation	
	Report	

FACILITY NAME:	AUDIT YEAR:	
MAINTAINING ALL RECORDS	NOTES: (State whether or not each record is complete, incomplete, or missing. List the incomplete and missing records.)	
Corrective Actions	(List Corrective Actions and dates of each Corrective Action)	
Benchmark Monitoring		
Proper O & M	(List the effort and the dates of the efforts to maintain proper O&M)	
Quarterly Outfall Examinations	<input type="checkbox"/> Kept with SWPPP	
SWPPP		
	Routine Inspections	

	<input type="checkbox"/> Kept with SWPPP
Comprehensive Site Compliance Evaluations	<input type="checkbox"/> Kept with SWPPP

Name and Title of Person
Conducting the Audit:

Certification:

I certify under 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.

Printed name of responsible corporate officer or
Duly authorized representative who signed this document

Date

Responsible corporate officer or
Duly authorized representative

Date