

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF: CONCRETE SUPPLY COMPANY, LLC MAULDIN SIMPSONVILLE, SC RESPONDENT	CONSENT AGREEMENT AND FINAL ORDER DOCKET NO. CWA-04-2024-1011(b)
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CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), (CWA or the Act) and Section 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation / Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 309(g)(2)(A) of the CWA.
5. Respondent is Concrete Supply Company, LLC (Respondent), a liability corporation formed under the laws of the state of South Carolina doing business in the state of South Carolina. This proceeding pertains to Respondent's facility located at 1438 Old Stage Road, Simpsonville, Greenville County, South Carolina (Facility).

III. GOVERNING LAW

6. 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.
7. 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, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the state of South Carolina, through the South Carolina Department of Environmental Services (SCDES), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.
8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source."
9. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), an NPDES permit is required for "a [stormwater] discharge associated with industrial activity."
10. "Stormwater discharge associated with industrial activity," as defined at 40 C.F.R. § 122.26(b)(14), means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.
11. Pursuant to 40 C.F.R § 122.26(b)(14)(ii), "[f]acilities classified within Standard Industrial Classification... 32 (except 323)..." which would include SIC Codes 3271 and 3273 are considered to be engaging in "industrial activity" for purposes of 40 C.F.R. § 122.26(b)(14).
12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" as "[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged."
13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "[t]he waters of the United States, including the territorial seas."
14. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Complainant represents that South Carolina was provided a prior

opportunity to consult with the Complainant regarding this matter.

15. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

IV. FINDING OF FACTS

16. From the time industrial operations at this Facility began to present, stormwater associated with industrial activity generally discharged from the Facility through an unnamed tributary to Bridge Fork Creek.
17. Bridge Fork Creek connects through Gilder Creek to the Enoree River. The Enoree River is a water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R § 122.2.
18. The Enoree River and tributaries are classified as a Class FW (freshwaters) by the SCDES. *See S.C. Code Ann. Regs. 61-68.*
19. The SCDES issued NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, Permit No. SCR000000 (SC Permit), in accordance with the provisions of the South Carolina Pollution Control Act (S.C. Code 48-1-10, et seq.), and the regulations and standards adopted and promulgated thereunder, and under authority granted pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Permit became effective on October 1, 2016, was reissued May 26, 2022, and will expire on June 30, 2027. Respondent obtained coverage for stormwater discharges from the Facility under the SC Permit by submitting a Notice of Intent (NOI) to SCDES.
20. Part II of the SC Permit required permittees to develop and implement Control Measures and Effluent Limits program for their Facility.
21. Part III of the SC Permit required permittees to develop and implement Corrective Action program for their Facility.
22. Part IV of the SC Permit required permittees to develop and implement Routine Facility inspections, Quarterly Visual Assessment of Stormwater Discharges, and Comprehensive Site Inspections for their Facility.
23. Part V of the SC Permit required permittees to develop and implement a Stormwater Pollution Prevention Plan (SWPPP) for their Facility.
24. Part VI of the SC Permit required permittees to develop and implement a monitoring program for their Facility.

25. Part VII of the SC Permit required permittees to develop and implement a reporting and record keeping procedures program for their Facility.

26. On December 13, 2018, EPA, in conjunction with SCDES, performed an Industrial Stormwater Enforcement Inspection (CSWEI) at the Facility to evaluate Respondent's compliance with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311; the regulations promulgated thereunder at 40 C.F.R. § 122.26; and the SC Permit.

27. During the CSWEI of the Facility, EPA's inspectors observed:

- A. The Facility was discharging water from the recycled concrete storage area through an undocumented discharge point on the northeastern side of the Facility.
- B. The SWPPP provided for the Facility failed to meet the following requirements:
 - a. The SWPPP was last updated in 2010, which was not within 90 days of the SC Permit's effective date of October 1, 2016.
 - b. The SWPPP failed to provide descriptions of all the control measures utilized at the facility; specifically, housekeeping measures like sweeping used to address the pollutant potential from paved areas.
 - c. The SWPPP did not include the procedures and schedules for good housekeeping and preventative maintenance measures.
 - d. The SWPPP did not include details on the procedures for conducting the analytical monitoring at the Facility.
 - e. The SWPPP did not include details of the procedures for performing the various types of inspections specified by the SC Permit (i.e., routine facility inspections, quarterly visual inspections, and comprehensive facility inspections).
- C. Respondent failed to produce records pertaining to the time and duration of rain events.
- D. Facility personnel reported that pH strips were used for the pH monitoring at the Facility, which is not an approved method under 40 C.F.R. Part 136.
- E. Respondent was unable to provide records demonstrating a consecutive four quarters average below the benchmark values.

28. On February 8, 2019, the EPA issued an Inspection Report to Respondent.

29. On January 8, 2020, EPA issued the Notice of Violation and an Opportunity to Show Cause to Respondent, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a).

30. On April 20, 2020, the EPA held, and Respondent participated in, a show cause meeting via teleconference.

31. On June 11, 2020, Respondent filed a response to EPA's Notice of Violation and an Opportunity to Show Cause – Mauldin Simpsonville Plant ("CSC Response"), as a supplement to evidence presented at the Show Cause meeting. Respondent expressly denied certain findings and conclusions in the Notice of Violation and Opportunity to Show Cause issued by the EPA.

V. ALLEGED VIOLATIONS

32. At all times relevant to this action, Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

33. At all times relevant to this action, the Respondent owned and/or operated the Facility.

34. As a result of the CSWEI and its review of the information received at and following the show cause meeting, the EPA has determined that stormwater associated with industrial activity was discharged from the Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into waters of the United States.

35. Based on the CSWEI and information received at and following the show cause meeting, EPA alleges the Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, due to Respondent's failure to comply with the SC Permit and the CWA implementing regulations. Specifically, the EPA alleges the following violations:

- A. The Facility was observed discharging water from the recycled concrete storage area through an undocumented discharge point on the northeastern side of the Facility, which EPA alleges is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and Part 1.3 of the SC Permit.
- B. The SWPPP provided for the Facility failed to meet the following requirements:
 - a. the SWPPP was last updated in 2010, which was not within 90 days of the SC Permit's effective date of October 1, 2016, which EPA alleges is in violation of Part 5 of the SC Permit.
 - b. The SWPPP failed to provide descriptions of all the control measures utilized at the facility; specifically, housekeeping measures like sweeping used to address the pollutant potential from paved areas. EPA alleges this is in violation of Part 5.1.4 of the SC Permit.
 - c. The SWPPP did not include the procedures and schedules for good housekeeping and preventative maintenance measures, which EPA alleges is in violation of Part 5.1.5.1.a of the SC Permit.
 - d. The SWPPP did not include details on the procedures for conducting the analytical monitoring at the Facility, which EPA alleges is in violation of Part 5.1.5.2.a of the SC Permit.

- e. The SWPPP did not include details of the procedures for performing the various types of inspections specified by the SC Permit (i.e., routine facility inspections, quarterly visual inspections, and comprehensive facility inspections), which EPA alleges is in violation of Part 5.1.5.2.e of the SC Permit.
- C. Respondent failed to produce records pertaining to the time and duration of rain events, which EPA alleges is in violation of Part 6.1.3 of the SC Permit.
- D. Facility personnel reported that pH strips were used for the pH monitoring at the Facility, which is not an approved method under 40 C.F.R. Part 136 and which EPA alleges is in violation of Part 6.2.c of the SC Permit.
- E. Respondent was unable to provide records demonstrating a consecutive four quarters average below the benchmark values, which EPA alleges is in violation of Part 6.2.1.2 of the SC Permit.

VI. STIPULATIONS

36. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

37. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- A. Admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- B. Neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO. Respondent maintains it would deny and defend against the allegations described herein;
- C. Consents to the assessment of a civil penalty as stated below;
- D. Consents to the conditions specified in this CAFO;
- E. Waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- F. Waives its rights to appeal the Final Order accompanying this CAFO.

38. For the purpose of this proceeding, Respondent:

- A. Agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- B. Acknowledges that this CAFO constitutes an enforcement action for

purposes of considering Respondent's compliance history in any subsequent enforcement actions;

- C. Waives any rights it may possess or in equity to challenge the authority of EPA to bring civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- D. Waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO;
- E. Agrees to comply with the terms of this CAFO; and
- F. Waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

39. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

40. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CAFO based on comments received during the public comment period.

VII. TERMS OF PAYMENT

41. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$21,000**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

42. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

If Respondent sends payment by standard U.S. Postal Service delivery, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

If Respondent sends payment by non-standard mail delivery (e.g. FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
REX (Remittance Express): 1-866-234-5681

43. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_regional_hearing_clerk@epa.gov

And

Jeremy Judd

44. "Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and "Docket No. CWA-04-2024-1011(b)."
45. Pursuant to 33 U.S.C. § 1319(g)(9), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any portion overdue:
- A. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed currently prevailing rates.
 - B. Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9); and
 - C. Attorneys' Fees and Costs of Collection. The United States' attorneys' fees and costs of collection.
46. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- A. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - B. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - C. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or

- D. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

47. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

48. Effective upon signature of this CAFO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the Effective Date shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA related to the matters addressed in this CAFO and that, in any action brought by EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

VIII. EFFECT OF CAFO

54. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

55. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but, shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

56. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

57. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

58. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Administrator.

59. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
60. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
61. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
62. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
63. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
64. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
65. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
66. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
67. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

68. This CAFO shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages

The foregoing Consent Agreement In the Matter of Concrete Supply Company, LLC, **Docket No. CWA-04-2024-1011(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 4

IN THE MATTER OF: CONCRETE SUPPLY COMPANY, LLC MAULDIN SIMPSONVILLE, SC RESPONDENT	FINAL ORDER DOCKET NO. CWA-04-2024-1011(b)
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The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of Concrete Supply Company, LLC, **Docket No. CWA-04-2024-1011(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Ethan R. Ware
 Williams and Mullen
 eware@williamsmullen.com
 1230 Main Street, Suite 330 | P.O. Box 8116 (29202) | Columbia, SC 2920

To EPA: Jeremy Judd
 Environmental Engineer
 judd.jeremy@epa.gov

 Michele Wetherington
 Associate Regional Counsel
 wetherington.michele@epa.gov

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov