

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

Tullis, Inc.
P.O. Box 493416
Redding, CA 96049

) Docket No. CWA 309(a)-11-010
)
)

**FINDINGS OF VIOLATION
AND
ORDER FOR COMPLIANCE**

) Proceedings under Section 308(a) and 309(a)
) of the Clean Water Act, as amended, 33
) U.S.C. Sections 1318(a), and 1319(a)

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9 and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

FINDINGS OF VIOLATION

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States, except in compliance with the Act, inter alia Section 402, 33 U.S.C. § 1342.
2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 CFR § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 CFR § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States. Pursuant to 40 CFR §§ 122.26(a)(1)(ii) and

122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. Construction Sand and Gravel facilities, Standard Industrial Classification (SIC) 1442, fall under SIC Industry Group 14 and thus are defined as industrial activities subject to the permitting requirements of Section 402(p) of the Act, pursuant to 40 CFR § 122.26(b)(14)(ii). Similarly, under 40 CFR § 122.26(b)(14)(iii), facilities where Asphalt Mixtures for Paving are produced fall under SIC 2951, which falls under SIC Industry Group 29. As such this is an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations authorize EPA to, *inter alia*, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.
6. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activity which may result in a discharge of storm water.
7. The State of California has an EPA-approved NPDES program and issues permits, including storm water permits, through its State Water Resources Control Board (State Board) and nine Regional Water Quality Control Boards (Regional Boards). The permit that is currently effective, General Permit No. CAS000001 for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, Water Quality Order No. 97-03-DWQ (General Permit), was adopted on April 17, 1997.
8. All facility operators seeking coverage under the General Permit must submit a notice of intent to comply (NOI) to the State Board at least 14 days prior to the beginning of industrial operations that may result in a discharge of storm water. (See General Permit Attachment 3) Industrial storm water dischargers that do not submit an NOI must submit an application for an individual NPDES permit. (40 CFR § 122.21(a) and General Permit Fact Sheet (“Notification Requirements”))
9. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (General Permit, Section A(1) and (2), pgs. 11-12) The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges. (*Id.*)

10. The SWPPP must include, inter alia, a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source (General Permit Section A(8), pg. 17) as well as a site map (or maps) that identifies: (a) facility boundaries and an outline of facility drainage areas, (b) the storm water collection and conveyance system, (c) an outline of impervious areas, (d) locations where materials are directly exposed to precipitation, and (e) areas of industrial activity. (General Permit, Section A(4), pgs. 12-14)
11. Facility operators must prevent or reduce pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. (General Permit, Effluent Limitation B(3), pg. 4)
12. Facility operators must develop a written monitoring program and must conduct quarterly visual observations of non-storm water discharges, monthly visual observations of storm water events, and prescribed storm water sampling and analysis. (General Permit, Section B(1), (3), (4), and (5), pgs. 24-27) In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit, Section B(14), pg. 35) A copy of the written monitoring program as well as records of inspections, steps taken to reduce or prevent discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit, Section B(13), pg. 34)
13. Tullis, Inc., dba Cottonwood Creek Sand and Gravel (Respondent) is a California Corporation and is thus a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5).
14. Respondent operates a facility located at 19840 Draper Road in Cottonwood, California (Facility). Respondent has operated this Facility since at least June 1, 2006. Respondent is engaged in the operation of sand and gravel mining pits and washing, screening, or otherwise preparing sand and gravel for construction uses, activities classified under SIC 1442, and thus subject to the requirements of the General Permit. (General Permit, Attachment 1, ¶ 2 ("Facilities covered by this general permit")) Further, asphalt production activities at the Facility include stock-piling of crushed aggregate and reclaimed asphalt near the batch plant, producing lime slurry for use as an additive to the aggregate, and storing liquefied asphaltic cement in two heated bulk tanks. Accordingly, these activities are classified under SIC 2951 and are subject to the General Permit. (Id.)

15. On March 24, 2011, representatives of EPA and the Central Valley Regional Board inspected the Facility to evaluate Respondent's compliance with the General Permit. The Inspection Report is attached for reference.
16. On the day of the inspection, the Facility grounds appeared saturated with areas of storm water ponding throughout. Data from the National Oceanic and Atmospheric Administration (NOAA) National Climatic Data Center (Redding Municipal Airport Weather Station) indicates that between March 15 and March 24 there was a period of ten consecutive days of observed precipitation, for a cumulative total of approximately 5.04 inches. Rainfall events at the Facility that exceed 0.5 inches are generally sufficient to generate storm water runoff. See 55 FR 47990, 48018 ("National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges" (Final Rule))
17. EPA Inspectors observed storm water discharging at the Facility through a conveyance channel and natural drainage pathways onto a haul road and into Cottonwood Creek. (See Inspection Report, pg. 5)
18. EPA Inspectors also observed discharges of process waste water commingled with storm water from the Facility's settling ponds flowing across an access road and into an unnamed tributary to Cottonwood Creek as well as into a drainage ditch that discharges into a natural channel flowing into an unnamed tributary to Cottonwood Creek. (See Inspection Report, pgs. 5-6)
19. During the inspection, EPA staff observed that the facility's sand and gravel processing equipment, asphalt and lime slurry plants, and stockpile areas are located adjacent to the floodplain of Cottonwood Creek. (See Inspection Report, pg. 4) The entire facility is unpaved with exception of the access road. (Id.) The facility did not appear to have been graded to control storm water flow. (Id.)
20. The Facility's fueling area consists of a secondary containment structure containing five above-ground storage tanks (AST) of various capacities and four 55-gallon barrels. (See Inspection Report, pg. 4) A significant volume of opaque liquid was observed within the fueling area secondary containment unit. (Id.) Storm water from the area around the fueling area was observed draining via overland flow and discharging via sheet flow across the access road and into the unnamed tributary to Cottonwood Creek. (Id.)
21. Poor housekeeping practices were observed throughout the facility. (See Inspection Report, pg. 7) For example, the inspection team observed the following: residual pollutants (i.e. paint) on the ground within the facility's staging area; excessive scrap materials and obsolete equipment exposed to storm water; unsecured diesel fuel in a spray tank on ground; a grease drum in direct contact with storm water; accumulated storm water within a 5-gallon grease

bucket; accumulated storm water within a 5-gallon waste oil/sludge bucket; empty motor oil containers on ground; and an uncovered dumpster containing what appeared to be contaminated liquid. (Id.)

22. Following EPA's inspection, Respondent submitted an NOI for the General Permit to the State Board on or about April 8, 2011. The State Board returned the NOI to Respondent on April 13, 2011 because it had not been signed. Respondent resubmitted the NOI on or about April 18 and the State Board assigned Waste Discharge Identification (WDID) number 5R45I023113 to Respondent for the Facility.
23. Cottonwood Creek is a perennial water body, a tributary to the Sacramento River and a "water of the United States," as defined by CWA Section 502(7) and EPA regulations in 40 CFR § 122.2 and 40 CFR § 230.3(s)(1), (5) and (7).
24. The NOAA's National Marine Fisheries Service (NMFS) has issued final determinations listing the Chinook Salmon Central Valley Spring-Run as "threatened" (70 FR 37160), Central Valley Fall and Late Fall-run as a "Species of Concern" (69 FR 19975), and Steelhead in California's Central Valley as "threatened" (71 FR 834) under the Endangered Species Act (ESA). NMFS has designated the reach of Cottonwood Creek between its outlet into the Sacramento River (Lat 40.3777, Long -122.1991) upstream to its endpoint in Cottonwood Creek (Lat 40.3943, Long -122.5254) as critical habitat for Central Valley Spring Run Chinook Salmon and Central Valley Steelhead (70 FR 52488).
25. Storm water discharged from the Facility contains "pollutants," including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is storm water discharge associated with industrial activity as defined by EPA regulations in 40 CFR § 122.26(b)(14).
26. Process waste water discharged from the Facility contains "pollutants," as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
27. Based on the foregoing, EPA has determined that Respondent's operations at the Facility resulted in discharges of pollutants to waters of the U.S. without a permit. Accordingly, Respondent has violated Sections 301(a) and 308(a) of the Act, 33 U.S.C. §§ 1311(a) and 1318(a).

ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violations and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Sections 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Act, Respondent is hereby ordered to comply with the following requirements:

28. Immediately upon receipt of this Order, Respondent shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.
29. Within 60 days of receipt of this Order, Respondent shall complete the following interim control measures (Interim Measures):
 - a. Install appropriate BMPs for all exposed areas of the Facility used for material handling and vehicle/equipment maintenance to minimize exposure of significant materials (e.g. fuels, oil and grease, asphaltic cement, obsolete equipment, and lime) to storm water and otherwise minimize pollutant discharges;
 - b. Properly dispose of all accumulated liquid within the secondary containment structure housing the Facility's diesel and oil above-ground storage tanks (AST) in accordance with all applicable federal and state regulations;
 - c. Inspect the secondary containment structures housing the Facility's diesel and oil AST and asphalt batch plant's fuel AST and repair all deficiencies impacting the structures' integrity, including the unplugged drain observed discharging liquid to the ground from the secondary containment structure housing the Facility's asphalt batch plant's fuel AST;
 - d. Eliminate or cover obsolete equipment and scrap materials exposed to storm water and confine outdoor storage of obsolete equipment and scrap materials to designated areas that are outside of drainage pathways; and
 - e. Eliminate exposure of pollutant sources, including but not limited to fuels, oil and grease, asphaltic cement, lime and paints, to storm water through the establishment of adequate covered storage and/or other appropriate BMPs to minimize pollutant discharges.
30. Upon completion of the Interim Measures, Respondent shall submit a Notice of Completion to EPA, which shall include a list of the Interim Measures taken, the date each Interim Measure was completed, the person(s) responsible for overseeing completion of each Interim Measure, costs of implementing the


Interim Measures and copies of documents associated with the completion of the Interim Measures, such as contracts, permits, manifests, and photographs.

31. In performing the Interim Measures, Respondent shall not cause or contribute any unauthorized discharges to waters of the United States. Respondent shall comply with all applicable federal, state, and local waste storage and disposal requirements.
32. Within 60 days of receipt of this Order, Respondent shall submit a Storm Water Pollution Prevention Plan (SWPPP) to EPA that fully addresses all of the requirements in Sections A and B of the General Permit and addresses the areas of concern noted in the Inspection Report.
33. Respondent's SWPPP shall include, among other required information, a description of all structural and non-structural BMPs used at the Facility to ensure that prohibited non-storm water (including but not limited to process waste water) is segregated from storm water and authorized non-storm water discharges, a site map showing the full extent and acreage of the Facility, and a description of how the Facility will manage the process waste water.
34. Respondent's SWPPP shall include a description of the erosion control BMPs that Respondent will implement to eliminate or reduce the discharge of sediment from the Facility's network of haul roads used to access its in-stream sand and gravel mining sites.
35. Respondent shall fully implement the SWPPP upon submission to EPA and shall make and fully implement modifications necessary to address any EPA comments within 30 days of receipt of such comments.
36. Within 30 days of receipt of this Order, Respondent shall submit the following:
 - a. Any topographic maps of the Facility's site in Respondent's possession or which Respondent may reasonably acquire;
 - b. The lease and other relevant documents regarding Respondent's property interest in the Facility's site; and
 - c. An explanation regarding the statement in the NOI submitted for the Facility that discharges to Cottonwood Creek are "indirect" only.
37. Within 60 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with:
 - a. Developing the SWPPP;

- b. Implementing the SWPPP (projected incremental annual costs);
 - c. Implementing the Monitoring Program (projected incremental annual costs); and
 - d. Complying with this Order.
38. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 CFR § 122.22 (b)(2)) and shall include the following statement:
- 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, I certify that 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.
39. All submissions requested by this Order shall be mailed to the following address:
- U. S. Environmental Protection Agency - Region 9
Clean Water Act Compliance Office WTR-7
75 Hawthorne Street
San Francisco, CA 94105
Attention: Greg Gholson
- All telephone inquiries should be made to Greg Gholson, Environmental Scientist, at (415) 972-4209.
40. Respondent shall send a copy of all submissions required under this Order to:
- Central Valley Regional Water Quality Control Board - Redding Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002
Attention: George Day
41. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.
42. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all

applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.

43. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
44. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).
45. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
46. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
47. This Order shall become effective upon the date of receipt by Respondent.



Alexis Strauss, Director
Water Division



Date

