

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BLVD.  
LENEXA, KANSAS 66219

**FILED**

**December 13, 2024**

**11:28AM**

**U.S. EPA REGION 7  
HEARING CLERK**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
)  
Linwood Mining and Minerals Corporation, )  
)  
Respondent )  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )  
)

Docket No. CWA-07-2024-0090

COMPLAINT AND  
CONSENT AGREEMENT /  
FINAL ORDER

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 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) at 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (EPA) and Respondent, Linwood Mining and Minerals Corporation, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 301 and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

**Parties**

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”) with concurrence of the Regional Counsel.

5. Respondent is and was at all relevant times a corporation under the laws of the state of Iowa.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth the requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. Pursuant to Section 402(p) of the CWA, 33, U.S.C. § 1342(p), the EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

10. 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity” as “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.”

12. Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classification (SIC) Industry Group 14 and 32. *See* 40 C.F.R. § 122.26(b)(14)(ii) and § 122.26(b)(14)(iii). Within Group 14, SIC code 1422 includes facilities primarily engaged in mining or quarrying crushed and broken limestone and in grinding or pulverizing of limestone. Within Group 32, SIC code 3274 includes facilities primarily engaged in manufacturing quicklime, hydrated lime, and “dead-burned” dolomite from limestone, dolomite shells, or other substances.

13. Respondent received NPDES General Permit No. 3: IA0617-0435, Stormwater Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction and Gravel Facilities (General Permit No. 3), from Iowa Department of Natural Resources (Iowa DNR) to operate a limestone mining processing operation at the site on October 1, 1992. The permit has been renewed many times, most recently

July 27, 2023. At all times relevant to this action, Respondent had a NPDES permit for the Facility.

14. Iowa DNR is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **General Allegations**

15. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. At all times relevant to this action, Respondent was the owner and operator of a limestone mining processing facility located at 401 E. Front Street, Davenport, IA, and operating under SIC codes 1422 and 3274 (Facility or Site).

17. The Facility comprises approximately 1,600 acres, producing calcium carbonate, calcium oxide (lime), and construction materials. Limestone is mined from the quarry plant located on the north of East Front Street (Iowa Highway 22) (hereinafter the Quarry Plant). On the south side of East Front Street, along the bank of the Mississippi River, the Facility operates a lime plant to produce lime for chemical purposes (hereinafter the Lime Plant). The general topography of the Facility is sloped to drain south into the Mississippi River through streams and creeks.

18. The Facility has seven (7) permitted outfalls under General Permit No. 3 (GP3-01; GP3-02; GP3-03; GP3-04; GP3-05; GP3-06; GP3-07). Discharge from Outfall GP3-02 is collected and monitored annually during a rain event as required since it is the representative discharge of all outfalls at the Quarry Plant (GP3-01, GP3-02, GP3-03, GP3-04, GP3-05). Outfalls GP3-06 and GP3-07 are also monitored outfalls at the Lime Plant.

19. Stormwater runoff and surface drainage from the Quarry Plant is primarily directed to surface flow toward five GP3 outfalls (GP3-01; GP3-02; GP3-03; GP3-04; GP3-05), all which flow into Donaldson Creek.

20. Donaldson Creek is a perennial stream that flows year-round south approximately 1.5 stream miles into the Mississippi River, a traditional navigable water.

21. Donaldson Creek is a relatively permanent water of the United States that flows to a traditionally navigable water.

22. The Site contains “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), and “point sources” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. Stormwater runoff and surface drainage from the Facility contain “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. Donaldson Creek is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. Stormwater runoff from industrial activity at Respondent’s Facility results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

26. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

27. Effective March 1, 2023, Iowa DNR issued Iowa General Permit for Storm Water Discharge Associated with Construction Activity for Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities (NPDES General Permit No. 3) authorizing industrial stormwater discharges from the Facility subject to compliance with conditions and limitations set forth in the permit, under NPDES Permit No. IA0617-0435 (hereinafter Respondent’s Permit). General Permit No. 3 expires on October 1, 2028.

28. On October 26 and 27, 2023, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), conducted an inspection of the Facility (Inspection) to evaluate Respondent’s compliance with its NPDES Permits and CWA.

29. During the Inspection, the EPA inspector reviewed Respondent’s records and obtained copies of Respondent’s documents related to the NPDES Permits, including but not limited to, the Facility’s stormwater pollution prevention plan (SWPPP), and inspection records. The EPA inspector also toured the Facility, observed discharge locations, and photographed various stormwater-related areas.

30. A copy of the Inspection report was sent electronically to Respondent EPA by the EPA on December 13, 2023.

### **Findings of Violation**

#### **Count 1**

#### **Unauthorized Discharge**

31. The facts stated above are herein incorporated by reference.

32. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with a NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

33. Part I.D. of the Respondent's Permit authorizes owners and operators who submit a complete Notice of Intent (NOI) in accordance with the requirements of the Permit to discharge storm water associated with industrial activity under the terms and conditions of this permit.

34. Part VI.N of the Respondent's Permit provides that the permittee shall at all times properly operate and maintain the facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Permit and with the requirements of the Storm Water Pollution Prevention Plan (SWPPP). Adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of the Permit.

35. Part III.C of the Respondent's Permit provides that the SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility and include, among other requirements, a site map showing an outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and each surface water body.

36. At the time of the Inspection, it was raining, and the ground was wet.

37. During the Inspection, the EPA inspector observed and documented contaminated surface runoff leaving the Site from an unidentified and unauthorized outfall into Donaldson Creek, causing the water in the creek to be significantly murky. Contaminated water was discharging through inadequate structural control Best Management Practices (BMPs).

38. During the Inspection, the EPA inspector further observed clear water upstream of the unidentified and unauthorized outfall discharging contaminated water confirming the pollutants were from the Facility.

39. Respondent's unauthorized discharge of pollutants is a violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a) and the conditions and limitations of Respondent's NPDES permit.

### **Penalty**

40. As alleged by the EPA above, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, for violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023, Respondents are liable for civil penalties of up to \$26,685 per day for each day during which the violation continues, up to a maximum of \$333,552.

### **CONSENT AGREEMENT**

41. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.

42. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

43. Respondent neither admits nor denies the factual allegations in this Complaint and Consent Agreement/Final Order.

44. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order. Respondent waives any right to contest the allegations pursuant to 40 C.F.R. § 22.18(b)(2).

45. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

46. Respondent consents to receive service of the filed Consent Agreement and Final Order electronically at the following email address: dosland@linwoodmining.com.

47. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

48. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

### **Terms of Payment**

49. Respondent agrees to pay a civil penalty in the amount of **\$23,244** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

50. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

51. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-07-2024-0090,

- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Amy Gonzales, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
gonzales.amy@epa.gov

Kate Vetterick, Attorney  
U.S. Environmental Protection Agency, Region 7  
vetterick.kate@epa.gov

and

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to:  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or 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 appropriate docket number and Respondent’s name.

52. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

53. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 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 government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 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, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

54. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

55. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

#### **Effect of Settlement and Reservation of Rights**

56. Full payment of the penalty proposed in this Consent Agreement/Final Order shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

57. Respondent certifies compliance with the NPDES permit and the CWA at the Facility.

58. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

59. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.



60. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

61. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

### **General Provisions**

62. The Parties acknowledge that this Consent Agreement/Final Order is subject to public notice and comment required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

63. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

64. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

65. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

66. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed electronically in part and counterpart.

**For the Complainant, United States Environmental Protection Agency Region 7:**

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Date

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

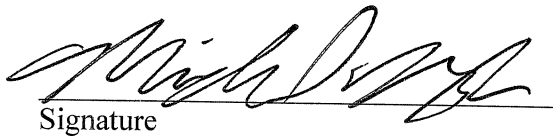
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Date

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Kate Vetterick  
Office of Regional Counsel

**For the Respondent, Linwood Mining and Minerals Corporation:**

  
Signature

12/16/24  
Date

Michael Bush  
Name

President  
Title

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

**Certificate of Service**

I certify a true and correct copy of the Complaint and Consent Agreement / Final Order was sent this day in the following manner to the addressees:

Copy emailed to representatives for Respondent:

Darin Osland  
Environmental Manager  
Linwood Mining and Minerals Corporation  
dosland@linwoodmining.com

Copy emailed to Iowa DNR:

ted.petersen@dnr.iowa.gov  
Ted Petersen  
Iowa Department of Natural Resources

Copy emailed to representatives for Complainant:

vetterick.kate@epa.gov  
Kate Vetterick  
EPA Region 7 Office of Regional Counsel

colletier.carson@epa.gov  
Carson Colletier  
EPA Region 7 Enforcement and Compliance Assurance Division

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Signature