

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 17 of
the Environmental Conservation Law of the State of New York
("ECL") and Section 750-2.5 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York ("6 NYCRR"),

ORDER

DEC Case No.:
CO 3-20090929-15

-by-

DICK'S CONCRETE CO., INC.,

Respondent.

On December 11, 2009, an adjudicatory hearing was convened before Richard R. Wissler, Administrative Law Judge ("ALJ") of the Office of Hearings and Mediation Services for the New York State Department of Environmental Conservation ("Department" or "DEC"). The hearing concerned the Department's allegations that respondent/permittee, Dick's Concrete Co., Inc., failed to file discharge monitoring reports ("DMRs") as required by the Department's State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002, for a facility known as Fischer Lane Mine, located at Fischer Lane, Goshen, Orange County, New York 10924 (the "facility").

Department staff was represented by Scott W. Crisafulli, Esq., of the Office of General Counsel. Respondent/permittee failed to answer the Department staff's complaint and did not appear at the hearing.

ALJ Wissler prepared the attached hearing report, which I adopt as my decision in this matter subject to the following comments. Department staff appeared at the hearing and established by a preponderance of the evidence that respondent/permittee failed to submit annual DMRs for the years 2007 and 2008. Accordingly, the default motion has been rendered academic.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. By failing to serve an answer and appear at the hearing duly scheduled in this matter, Respondent/permittee Dick's Concrete Co., Inc. defaulted in this proceeding and waived its right to be heard.

II. Department staff established by a preponderance of the evidence that respondent/permittee violated 6 NYCRR 750-2.5(e) for failure to submit annual DMRs for the years 2007 and 2008 as required by the Department's SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit

No. GP-0-06-002 (“General Permit”) for a facility known as Fischer Lane Mine, located at Fischer Lane, Goshen, Orange County, New York 10924.

III. Within fifteen (15) days of the service of this order, respondent/permittee shall submit to the Department the outstanding DMRs for the years 2007 and 2008, as required by the General Permit. Respondent/permittee shall also submit any laboratory reports prepared for the completion of the outstanding DMRs.

IV. Within fifteen (15) days of the service of this order, respondent/permittee shall pay a civil penalty in the amount of five thousand dollars (\$5,000) by certified check, money order or cashier’s check made payable to the New York State Department of Environmental Conservation.

V. The DMRs and the penalty payment shall be sent to the Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, 14th Floor, Albany, New York 12233-1500, Attn: Elissa Armater.

VI. Any questions or other correspondence regarding this order shall be addressed to Koon Tang, P.E., Chief, Compliance Assurance Section, Bureau of Water Compliance, Division of Water, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, New York 12233-3506.

VII. The provisions, terms and conditions of this order shall bind respondent/permittee Dick’s Concrete Co., Inc., its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Alexander B. Grannis, Commissioner

Dated: Albany, New York
December 29, 2009

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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the Environmental Conservation Law of the State of New York
(ECL) and Section 750-2.5 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
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HEARING REPORT

DEC Case No:
CO 3-20090929-15

-by-

DICK'S CONCRETE CO., INC.,

Respondent.

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Procedural History

Respondent/permittee, Dick's Concrete Co., Inc., (Dick's Concrete) was served by certified mail with a notice of hearing and complaint, dated October 9, 2009, alleging two (2) violations of 6 NYCRR 756.3(a) [now 6 NYCRR 750-2.5(e)] for failure to file annual discharge monitoring reports (DMRs) for the years 2007 and 2008, as required by State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, GP-0-06-002, (General Permit) for a facility known as Fischer Lane Mine (facility), located at Fischer Lane, Goshen, Orange County, New York 10924. Upon the filing of a Notice of Intent, received by the Department on or about June 29, 2007, and designated NYR 00D605, Dick's Concrete had sought coverage for the facility under the General Permit. The complaint seeks the following relief: (1) a finding that respondent is in violation of the cited regulation, (2) a direction that respondent submit the overdue DMRs along with any accompanying laboratory reports, (3) a direction that respondent file future DMRs in a timely manner, (4) the assessment of a civil penalty in the amount of \$5,000, and (5) such other relief as the Commissioner may deem just and proper. In addition, the notice of hearing advised Dick's Concrete that any answer to the complaint must be filed by November 11, 2009, and that an adjudicatory hearing in the matter was scheduled for December 11, 2009, requiring its appearance. As shown by United States Postal Service records, Dick's Concrete received the notice of hearing and complaint on October 13, 2009. Dick's Concrete failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled for December 11, 2009.

On December 11, 2009, the adjudicatory hearing was convened before the undersigned Administrative Law Judge (ALJ) of the Department of Environmental Conservation's (Department) Office of Hearings and Mediation Services (OHMS). Department staff was represented by Scott W. Crisafulli, Esq., Chief of the Water Bureau. Neither Dick's Concrete nor any representative appeared on its behalf.

Department staff called one witness, Meredith U. Streeter, P.E., an Environmental Engineer II in the SPDES Compliance Assurance Section of the Department's Division of Water. Department staff submitted five (5) exhibits, all of which were received in evidence. The undersigned took official notice of and received into evidence, as an OHMS exhibit, a copy of Permit No. GP-0-06-002 entitled "New York State Department of Environmental Conservation SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity," with an effective date of March 28, 2007, and an expiration date of March 27, 2012. At the close of the hearing, Department staff moved for a default judgment and subsequently submitted a proposed order.

Applicable Regulatory Provisions

6 NYCRR 750-1.2(a)(28): "Discharge Monitoring Report (DMR) means a report submitted by a permittee to the department summarizing the effluent monitoring results obtained by the permittee over periods of time as specified in the SPDES permit."

6 NYCRR 750-2.5(e)(1): "The permittee shall submit the results of any wastewater or ambient monitoring results required by the permit at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee by the department, in a format acceptable to the department, or by the electronic transfer of data as approved by the department. Electronic submissions shall conform to the format, standards and other conditions specified by the department. The regional water engineer may also require the submittal of such other information as is necessary to determine the validity of monitoring results submitted in accordance with permit requirements. In no event shall reports on discharges to surface waters required by this subdivision be submitted at a frequency of less than once per year."

6 NYCRR 756.3(a), repealed and replaced by 6 NYCRR 750-2.5(e)(1) in 2003, provided: "(a) Any results obtained by a permittee pursuant to monitoring requirements in a SPDES permit shall be reported at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee with the SPDES permit."

Findings of Fact

1. Upon its filing of a Notice of Intent, received by the Department on or about June 29, 2007, and designated NYR 00D605, Dick's Concrete Co., Inc., (Dick's Concrete), sought coverage under the New York State Department of Environmental Conservation SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002, (General Permit) for a facility known as Fischer Lane Mine (facility), located at Fischer Lane, Goshen, Orange County, New York 10924.
2. The facility is a sand and gravel operation engaged in mineral mining and dressing and its standard industrial classification (SIC) Code is 1442.
3. The facility has five (5) stormwater outfalls.

4. Sector J of the General Permit at pages VIII.J-1 through VIII.J-4 lists the requirements applicable to stormwater discharges associated with industrial activities designated SIC Code 1442.
5. As provided in Table VIII-J-1 on page VIII.J-3 of the General Permit, mineral mining and dressing facilities are required to monitor their stormwater discharges for certain pollutants of concern including total suspended solids and pH.
6. Pursuant to the direction found on pages 35 and 36 of the General Permit, the facility is required to file annual discharge monitoring reports (DMRs) with the Department summarizing its monitoring results for the pollutants of concern listed in Finding of Fact 5.
7. Meredith U. Streeter, P.E. is an employee of the Department whose duties include the care, custody, and maintenance of the DMRs filed with the Department.
8. On December 11, 2009, Meredith U. Streeter searched the DMR files of the Department for any and all DMRs filed by Dick's Concrete or anyone else on behalf of the facility as required under the General Permit.
9. As a result of her search, Meredith U. Streeter determined that there were no annual DMRs in the files of the Department for the facility for the years 2007 and 2008 for the pollutants of concern listed in Finding of Fact 5.
10. Dick's Concrete was served by certified mail with a notice of hearing and complaint, dated October 9, 2009, alleging two (2) violations of 6 NYCRR 756.3(a) [now 6 NYCRR 750-2.5(e)] for failure to file the DMRs indicated in Finding of Fact 9. The notice of hearing advised Dick's Concrete that it was required to file an answer to the complaint by November 11, 2009, and that an adjudicatory hearing in this matter would be convened on December 11, 2009, at the Department's Region 3 offices.
11. As shown by United States Postal Service records, Dick's Concrete received the notice of hearing and complaint on October 13, 2009.
12. Dick's Concrete failed to file an answer to the complaint and failed to appear for the adjudicatory hearing held on December 11, 2009.

Discussion

Department staff's proof presents a prima facie case demonstrating that Dick's Concrete failed to file DMRs with the Department for the facility, Fischer Lane Mine, for the years 2007 and 2008 as set forth in Finding of Fact 9, above, in violation of the express provisions of General Permit GP-0-06-002 and applicable Department regulations.

The record shows that Dick's Concrete was served with the notice of hearing and complaint on October 13, 2009, and that it failed to file an answer to the complaint or to appear

for the scheduled adjudicatory hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's proposed order and the \$5,000 civil penalty it seeks are consistent with the Department's penalty policy as well as applicable provisions of ECL article 71.

Recommendation

Based upon the foregoing, I recommend the Commissioner issue an order granting the relief sought in the proposed order submitted by Department staff pursuant to 6 NYCRR 622.15(b)(3).

_____/s/_____
Richard R. Wissler
Administrative Law Judge

Dated: Albany, New York
December 23, 2009

EXHIBIT CHART – DMR EXPEDITED PROCEEDINGS

Matter of Dick's Concrete Co. Inc.
December 11, 2009 – Region 3

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	October 8, 2009 cover letter, with attached October 9, 2009 Statement of Readiness, October 9, 2009 Notice of Hearing, October 9, 2009 Complaint with attached Affidavit in Support of Meredith U. Streeter, P.E., sworn to October 8, 2009, and Order on Consent (unsigned)	√	√	Department Staff	
2	Notice of Intent or Termination	√	√	Department Staff	
3	Notices of Violation (July 9, 2009 and August 14, 2008)	√	√	Department Staff	
4	Certified mail delivery information and Affidavit of Service	√	√	Department Staff	
5	Department Staff's Penalty Calculation	√	√	Department Staff	
OHMS A	Multi Sector General SPDES Permit	√	√	Department Staff	