

**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”), Section 750 *et seq.* of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), and State Pollutant Discharge Elimination System (“SPDES”) Permit No. NYR00D720,

ORDER

DEC Case No:
CO2-20121011-4

-by-

QUADROZZI CONCRETE CORP.,

Respondent.

On May 21, 2013, an adjudicatory hearing was convened before Richard R. Wissler, Administrative Law Judge (“ALJ”) of the Office of Hearings and Mediation Services of the New York State Department of Environmental Conservation (“Department”). The hearing addressed the allegations of Department staff that respondent Quadrozzi Concrete Corp. failed to file an annual discharge monitoring report (“DMR”) for calendar year 2011 and failed to file an annual certification report (“ACR”) for calendar year 2011 for its facility located at 73-02 Amstel Boulevard, Arverne, New York 11692.

ALJ Wissler prepared the attached hearing report, which I adopt as my decision in this matter, subject to my comments below. As stated in the hearing report, respondent’s facility is subject to the annual DMR and ACR filing requirements set forth in the Department’s SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002 (“permit”), and was assigned SPDES identification number NYR00D720. The permit, as well as 6 NYCRR 750-2.5(e), requires filing of monitoring reports as specified by the Department, and Department staff alleged that respondent violated both the permit and 6 NYCRR 750-2.5(e) (see Complaint, Hearing Exhibit 6, ¶ 18).

Respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing held on May 21, 2013.

As a consequence of respondent’s failure to answer or appear in this matter, Department staff moved for a default judgment. The ALJ recommended that Department staff’s motion for default be granted (see Hearing Report, at 4), and I concur that staff is entitled to a default judgment pursuant to 6 NYCRR 622.15. Furthermore, at the hearing, Department staff presented a prima facie case on the merits that respondent violated the permit and 6 NYCRR 750-2.5(e), and proved its case by a preponderance of the evidence (see Hearing Report, at 4). Accordingly, staff is entitled to a judgment based on record evidence.

According to the records of the New York State Department of State, of which I take official notice pursuant to 6 NYCRR 622.11(a)(5), Quadrozzi Concrete Corp. was dissolved as

of April 25, 2012. However, the facility's DMR and ACR reports for calendar year 2011 were due by March 31, 2012, prior to the date of the corporation's dissolution. Where, as here, violations relate to events that occurred prior to the dissolution of a business, subsequent dissolution of that business has no bearing on the proceeding (see Business Corporation Law ["BCL"] §§ 1006[a][4] & [b] and 1009; Matter of AMI Auto Sales Corp., Decision of the Commissioner, February 16, 2012, at 5; Matter of L-S Aero Marine, Inc., Order of the Commissioner, June 29, 2010, adopting ALJ's Default Summary Report [which, in part, cited BCL §§ 1005(a)(2), 1006(a) and 1009 as providing that a dissolved corporation continues its corporate existence for purposes of paying liabilities or obligations, for being sued, and to participate in administrative proceedings in its corporate name]).

Based upon the record of this proceeding, the relief and civil penalty requested by Department staff and recommended by the ALJ are authorized and appropriate.

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Quadrozzi Concrete Corp. waived its right to be heard at the hearing.
- II. Furthermore, based upon record evidence respondent Quadrozzi Concrete Corp. is adjudged to have violated 6 NYCRR 750-2.5(e) and the Department's SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002, for failing to submit an annual discharge monitoring report for calendar year 2011 and for failing to submit an annual certification report for calendar year 2011, for its facility located at 73-02 Amstel Boulevard, Arverne, New York 11692.
- III. Within fifteen (15) days of the service of this order upon respondent, respondent Quadrozzi Concrete Corp. shall submit to the Department an annual discharge monitoring report and an annual certification report for calendar year 2011, in accordance with the requirements of the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002.
- IV. Within fifteen (15) days of the service of this order upon respondent, respondent Quadrozzi Concrete Corp. shall pay a civil penalty in the amount of ten thousand dollars (\$10,000) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- V. The annual discharge monitoring report and the annual certification report for calendar year 2011 and the penalty payment, as referenced in paragraphs III and IV, respectively, of this order, shall be sent to the following address:

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, other than those relating to the submission of the annual discharge monitoring report and the annual certification report for calendar year 2011 and the penalty payment, shall be addressed to:

Meredith Streeter, 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 Quadrozzi Concrete Corp., its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/ _____
Joseph J. Martens
Commissioner

Dated: Albany, New York
July 8, 2013

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"), Section 750 *et seq.* of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York ("6 NYCRR"), and State Pollutant Discharge
Elimination System ("SPDES") Permit No. NYR00D720

HEARING REPORT

DEC Case No:
CO2-20121011-4

-by-

QUADROZZI CONCRETE CORP.,

Respondent.

Procedural History

Respondent/permittee Quadrozzi Concrete Corp. ("respondent") was served with a notice of hearing and complaint, dated March 21, 2013, alleging two (2) violations of 6 NYCRR 750-2.5(e) for failure to file an annual discharge monitoring report ("DMR") for the year 2011 and failure to file an annual certification report ("ACR") for the year 2011, 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 Quadrozzi Concrete Corp. ("facility"), located at 73-02 Amstel Boulevard, Arverne, New York 11692. Upon its filing of a Notice of Intent, dated June 15, 2007, received by the Department on June 20, 2007, and designated SPDES Permit No. NYR 00D720, respondent 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 and the permit; (2) a direction that respondent submit the overdue 2011 DMR and ACR; (3) the assessment of a civil penalty in the amount of \$10,000; and (4) such other relief as the Commissioner may deem just and proper. In addition, the notice of hearing advised respondent that any answer to the complaint must be filed by April 21, 2013, and that an adjudicatory hearing in the matter was scheduled for May 21, 2013, requiring its appearance. As shown by United States Postal Service ("USPS") records, service of the notice of hearing and complaint on respondent by certified mail was made on March 26, 2013. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled on May 21, 2013.

On May 21, 2013, 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") in the Department's Region 2 offices, 1 Hunter's Point Plaza, 47-40 21st Street, Long Island City, New York 11101. Department staff was represented by Udo Drescher, Esq., Assistant Regional Attorney, Region 2. No one appeared on behalf of respondent. Department staff moved for a default judgment in the matter and, in addition, elected to proceed with a hearing in the matter in the absence of respondent.

Department staff called one witness, Imdadul Islam, P.E., an Environmental Engineer 2, in the Department's Region 2 Division of Water. Department staff submitted nine (9) exhibits, all of which were received in evidence, including General 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, which was deemed in evidence.

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."

General Permit No. GP-0-06-002: "Part IV.B. Reporting Monitoring Results and Annual Certification Reporting.

1. Annual Certification Report - The annual certification report is the primary mechanism for reporting to the Department. A copy of the annual certification report form is provided in Appendix C of this permit.

a. Every facility covered by this general permit must complete and submit an annual certification report form in accordance with the submission deadlines in Table IV-4 [Monitoring Reporting Requirements, as applicable here, requiring the ACR to be filed annually].

b. Monitoring results for benchmark parameters and numeric effluent limitations must be reported on Discharge Monitoring Report (DMR) forms that will be provided by the Department. The completed DMR forms and any additional monitoring requested by the Department, where applicable, must be submitted along with the annual certification report as described in Table IV-4 [Monitoring Reporting Requirements, as applicable here, requiring the DMR to be filed annually with the ACR]."

Findings of Fact

1. Upon its filing of a Notice of Intent, dated June 15, 2007, received by the Department on June 20, 2007, and designated SPDES Permit No. NYR 00D720, Quadrozzi Concrete

Corp. (“respondent”) 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 Quadrozzi Concrete Corp. (“facility”), located at 73-02 Amstel Boulevard, Arverne, New York 11692. In the Notice of Intent, respondent stated that it was the “owner/operator” of the facility. (Exhibits 1 and 2.)

2. The facility manufactures concrete and its standard industrial classification (“SIC”) Code is 3273. (Exhibit 2.)
3. Sector E of the General Permit at pages VIII.E-1 through VIII.E-2 lists the requirements applicable to stormwater discharges associated with industrial activities designated SIC Code 3273. (Exhibit 1.)
4. As provided in Table VIII-E-2 on page VIII.E-2 of the General Permit, concrete manufacturing facilities are required to monitor their stormwater discharges for certain pollutants of concern including total suspended solids, pH and total recoverable iron. (Exhibit 1.)
5. Pursuant to the direction found on pages 35 and 36 of the General Permit, Part IV.B, 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 4. The annual DMR is due by March 31st of the following calendar year. (Exhibit 1.)
6. Pursuant to the direction found on pages 35 and 36 of the General Permit, Part IV.B, the facility is required to file an annual certification report (“ACR”) with the Department. The ACR is due by March 31st of the following calendar year. (Exhibit 1.)
7. Imdadul Islam, P.E., is an employee of the Department whose duties include the care, custody, and maintenance of the DMRs and ACRs filed with the Department. (Testimony of Imdadul Islam, Hearing Record.)
8. On May 21, 2013, Imdadul Islam searched the DMR and ACR files of the Department for any and all DMRs and ACRs filed by respondent or anyone else on behalf of the facility as required under the General Permit. (Testimony of Imdadul Islam, Hearing Record.)
9. As a result of his search, Imdadul Islam determined that there was no annual DMR in the files of the Department for the facility for the year 2011 for the pollutants of concern indicated in Finding of Fact 4. (Testimony of Imdadul Islam, Hearing Record.)
10. As a result of his search, Imdadul Islam determined that there was no ACR in the files of the Department for the facility for the year 2011. (Testimony of Imdadul Islam, Hearing Record.)

11. Respondent was served by certified mail with a notice of hearing and complaint, dated March 21, 2013, alleging two (2) violations of 6 NYCRR 750-2.5(e) for failure to file an annual DMR for the year 2011 and failure to file an ACR for the year 2011, as required by the General Permit, and as indicated in Findings of Fact 9 and 10. This certified mailing bore United States Postal Service (“USPS”) Label Number 71901050579922908921. As indicated in a USPS Track and Confirm email, respondent received the notice of hearing and complaint on March 26, 2013. (Exhibits 5, 6 and 8.)
12. The notice of hearing advised respondent that it was required to file an answer to the complaint by April 21, 2013, and that an adjudicatory hearing in this matter would be convened on May 21, 2013, at the Department’s Region 2 offices. (Exhibits 5 and 6.)
13. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled for May 21, 2013. (Hearing Record.)

Discussion

Department staff’s proof presents a prima facie case demonstrating that respondent failed to submit an annual DMR and an annual ACR for the year 2011, in violation of 6 NYCRR 750-2.5(e) and of the express provisions of General Permit GP-0-06-002.

The record shows that respondent, as directed in the notice of hearing, failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on May 21, 2013. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing, conducted in respondent’s absence, demonstrates by a preponderance of the evidence that respondent failed to submit an annual DMR and an annual ACR for the year 2011, in violation of 6 NYCRR 750-2.5(e) and of the express provisions of General Permit GP-0-06-002. The Department is entitled to judgment upon the facts proven.

Department staff’s proposed relief and the \$10,000 civil penalty it seeks are consistent with the Department’s penalty policy; the Division of Water’s Technical and Operational Guidance Series (“TOGS”) 1.4.2, entitled “Compliance and Enforcement of SPDES Permits;” and ECL 71-1929.

Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. Granting Department staff’s motion for default, finding respondent in default pursuant to the provisions of 6 NYCRR 622.15;
2. Finding respondent in violation of 6 NYCRR 750-2.5(e) for failure to file an annual discharge monitoring report (“DMR”) for the year 2011 and failure to file an annual

certification report (“ACR”) for the year 2011, as required by the General Permit for a facility designated SPDES Permit No. NYR 00D720 and known as Quadrozzi Concrete Corp., located at 73-02 Amstel Boulevard, Arverne, New York 11692;

3. Directing respondent to submit the annual DMR and the annual ACR for 2011 Department for the above facility;
4. Directing respondent to pay a civil penalty in the amount of ten thousand dollars (\$10,000.00); and
5. Directing such other and further relief as he may deem just and proper.

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

Dated: Albany, New York
June 17, 2013

EXHIBIT CHART – DMR/ACR EXPEDITED PROCEEDINGS*Matter of Quadrozzi Concrete Corp. – Arverne, New York – DEC Case No. 2-20121011-4*

May 21, 2013 – Region 2

Edirol No. 040620095047

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002, effective March 28, 2007, through March 27, 2012	✓	✓	Department Staff	Deemed in Evidence
2	Notice of Intent, dated June 15, 2007	✓	✓	Department Staff	
3	Notice of Violation for failure to submit ACR for calendar year 2011	✓	✓	Department Staff	
4	Notice of Violation for failure to submit DMR for calendar year 2011	✓	✓	Department Staff	
5	Notice of Hearing, dated March 21, 2013	✓	✓	Department Staff	
6	Complaint, dated March 21, 2013	✓	✓	Department Staff	
7	Cover letter from Scott Crisafulli, Esq. to Respondent, dated March 21, 2013, served with the Notice of Hearing and complaint	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
8	Affidavit of Service of Elissa Armater, sworn to May 10, 2013, with USPS attachments	✓	✓	Department Staff	
9	Penalty Calculation	✓	✓	Department Staff	