

slurry. The slurry is pumped into the abandoned quarry at a rate of approximately 1,100 gallons per minute, and the water is reclaimed and pumped back to the plant at approximately 800-900 gallons per minute.

- B. On January 1, 2013, the Department issued Missouri State Operating Permit (MSOP) number MO-0112950 to SGI, which authorizes stormwater and process water runoff from the quarry area and the rest of the operation through two (2) outfalls. MSOP number MO-0112950 is set to expire on December 31, 2016. Outfall 001, located at a north-central area of the operation, discharges stormwater and process water runoff from the quarry area and other plant areas. MSOP number MO-0112950 lists the design flow for Outfall 001 as 307,400 gallons per day, but the actual flow is dependent upon stormwater flow from the quarry and other plan areas and precipitation. Outfall 002 is a rock dike emergency stormwater outfall located below a process water settling pond at the easternmost edge of the operation. Receiving streams for both outfalls are tributaries to Big Creek. MSOP number MO-0112950 requires SGI to conduct quarterly sampling if discharges occur at Outfall 001, collect one (1) sample per discharge event at Outfall 002, and conduct quarterly stream monitoring in Big Creek above the operation, below Outfall 001, and below Outfall 002. MSOP number MO-0112950 also requires SGI to develop and implement a Stormwater Pollution Prevention Plan that lists specific best management practices to control and minimize the amount of potential contaminants from the operation that may enter stormwater.
- C. Big Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- D. Process industrial water and stormwater that has come into contact with process industrial wastes are water contaminants as the term is defined in Section 644.016(24), RSMo.
- E. On December 13, 2012, the Department received a phone call from Mr. David Dinkins, SGI Senior Manager of Environmental Health and Safety, reporting that a seep from an abandoned quarry at the operation was causing discoloration to a tributary to Big Creek and Big Creek. In response to the phone call, Department staff conducted an inspection at the operation, on December 13, 2012, and observed that the tributary to Big Creek had a milky pink hue and contained a chalky precipitate. At the confluence with the tributary to Big Creek, staff observed that Big Creek had a green, milky/cloudy hue in contrast to the water flowing in Big Creek above the confluence, which was clear. Staff observed that the discharge to the tributary was slurry from a seep in the quarry wall on the western side of the quarry near Highway K. The discharge from the seep was murky and milky, and appeared similar to the water observed in the tributary to Big Creek. During the inspection, Department staff observed survey crews at the operation constructing a temporary basin, or containment pond, to capture the water and pump it back into the quarry.

- F. On December 14, 2012, Department staff conducted a follow-up inspection at the operation to document the operation's progress towards capturing and controlling the seep. Staff observed that the operation moved the inflow slurry pipe closer to the reclaim pumps at the northeastern corner of the quarry to reduce the discharge from the seep. Staff observed a chalky, white precipitate in the tributary to Big Creek and in Big Creek just below the confluence with the tributary, but it was significantly less murky than had been observed by staff during the December 13, 2012, inspection. SGI was still doing minor site excavation in attempt to control and mitigate the seep.
- G. On December 19, 2012, Department staff conducted another follow-up inspection at the operation and observed that the water in the tributary to Big Creek was clear, but there was a significant amount of bottom deposits. At the confluence with the tributary, staff observed that the water in Big Creek was still slightly murky, and there was a visible amount of bottom deposits. At the seep, staff observed clear water flowing.
- H. On December 20, 2012, following a ½ to ¾ inch rainfall event, Department staff conducted a follow-up inspection at the operation, and observed that the tributary to Big Creek and Big Creek appeared milkier than was observed the previous day. Staff observed that SGI had installed straw bale best management practices in the tributary to Big Creek in an effort to mitigate the impact of the discharge to the tributary.
- I. During the December 13 and 19, 2012, inspections, Department staff collected in-stream water samples from the tributary and Big Creek, and documented differences in total suspended solids (TSS) (Table 1). The TSS concentration in the tributary to Big Creek was 4730 mg/L on December 13, 2012, and 14 mg/L on December 19, 2012.

Table 1. Total suspended solids concentrations (mg/L) for water samples collected in the tributary to Big Creek and Big Creek during the December 13 and 19, 2012, inspections.

Sample Location	December 13	December 19
Tributary to Big Creek-point of discharge	4730	14
Big Creek-upstream from confluence	< 5	< 5
Big Creek-mixing point at confluence	7	< 5

- J. On January 16, 2013, the Department issued Notice of Violation number 19217SE to SGI for violations observed during the December 13, 14, 19, and 20, 2012, site inspections.
- K. On March 12, 2013, Department staff performed a follow-up inspection at the operation and documented additional follow-up actions that SGI had taken to mitigate the seep. Department staff observed that SGI installed a separator that separates water from the slurry, pumps it back to the active quarry, and then to the plant on-site settlement basins as reclaimed water for use at the operation. Staff also observed that construction of the containment pond was completed, and a

diesel pump was used to pump water back into the quarry. Furthermore, staff observed that SGI had begun constructing a clay liner at the abandoned quarry wall in attempt to eliminate the seep.

- L. On September 17, 2013, the Department received correspondence from SGI stating that the containment pond successfully captures any seepage, which then gets pumped back into the quarry. The correspondence further indicated that SGI plans to supplement the existing compacted clay wall with the placement of Bentonite clay behind the compacted clay wall at the location of Dam 2 near the suspected source to attempt to fill any remaining voids in an attempt to eliminate the seep altogether. Lastly, the correspondence indicates that SGI plans to apply for a modification of MSOP number MO-0112950 to add a discharge point on the west side of the operation that would incorporate stormwater and process water from the spillway of the seep containment pond.
- M. On September 23, 2013, Mr. Kenneth Walton, President of SGI, spoke to Department staff and explained that SGI anticipates completing installation of the Bentonite clay by the end of November 2013, weather permitting, and applying for a modification of MSOP number MO-0112950 to include an additional outfall on the west side of the operation by July 2014.
- N. As a result of the above investigations, the Department incurred costs and expenses for staff time and water analyses in the amount of \$2,377.88.
- O. Section 644.096, RSMo, authorizes the State, or any political subdivision or agency, to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Section 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the State to their condition as they existed before the violation, sustained by the State because of the violation.
- P. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged by the Department herein are as follows:

1. Discharged water contaminants into waters of the state, which caused pollution and reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(1), 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.
2. Failed to prevent a discharge from a location other than the outfalls permitted by MSOP number MO-0112950, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

IV. AGREEMENT

- A. The Department and SGI desire to amicably resolve all claims and allegations that may be brought against SGI for violations alleged above in Section III, Citations and Conclusions of Law, without SGI admitting to the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of SGI under this AOC.
- C. SGI in compromise and satisfaction of the Department claims relating to the above-referenced violations agrees, without admitting liability or fault, to pay a civil penalty in the amount of twelve thousand dollars and zero cents (\$12,000.00). The payment shall be in the form of a check made payable to "Iron County Treasurer, as custodian of the Iron County School Fund." The check in the amount of twelve thousand dollars and zero cents (\$12,000.00) is due and payable upon execution of this AOC by SGI. The check and signed copy of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

- D. SGI agrees to pay the state's investigative costs in the amount of two thousand three hundred seventy-seven dollars and eighty-eight cents (\$2,377.88) in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of two thousand three hundred seventy-seven dollars and eighty-eight cents (\$2,377.88) is due and payable upon execution of this AOC by SGI. The check shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

- E. By December 9, 2013, SGI agrees to complete installation of the Bentonite clay placement at the location of Dam 2 near the suspected source behind the compacted clay wall in the west quarry to attempt to fill-in any voids necessary to eliminate the seep, and submit a written report to the Department documenting completion of the Bentonite clay placement and its effect on the seep.
- F. By July 1, 2014, SGI agrees to submit to the Department a complete application, including Form A, *Application for Construction or Operating Permit*, Form C, *Application for Discharge Permit – Manufacturing, Commercial, Mining*,

Silviculture Operations, Process Stormwater, and applicable fee, requesting modification of MSOP number MO-0112950 to add an outfall on the west side of the operation that would incorporate stormwater and process water from the spillway of the seep containment pond, if still applicable.

- G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, SGI shall notify the Department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five (5) days of notifying the Department, SGI shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of SGI's right to request an extension and may be grounds for the Department to deny SGI an extension.
- H. Should SGI fail to meet the requirements of section IV, paragraphs C through F of this AOC, SGI shall be subject to pay stipulated penalties upon demand by the Department in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$250.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1,000.00 per day

Stipulated penalties will be paid in the form of a check made payable to "Iron County Treasurer, as custodian of the Iron County School Fund." Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

Nothing in this paragraph H shall be deemed to require the Department to demand stipulated penalties.

- I. Nothing in this AOC forgives SGI from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means for any noncompliance with the laws of the State of Missouri not addressed herein. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

- J. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.
- K. Contingent upon full payment of the above-mentioned penalty and full compliance with all provisions of this AOC, the Department agrees to refrain from initiating or asserting against SGI any civil or administrative suit claiming violations of the MCWL, Chapter 644, RSMo, listed in Notice of Violation number 19217SE.
- L. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to SGI for its records.
- M. Nothing in this AOC shall excuse SGI's obligation to comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, SGI consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

Ms. Corinne Rosania
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 4th day of March, 2014



John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 21st day of February, 2014



Kenneth Walton, President
Specialty Granules, Inc.

Copies of the foregoing served by certified mail to:

- Mr. Kenneth Walton, President CERTIFIED MAIL:
Specialty Granules, Inc.
13424 Pennsylvania Avenue, Suite 303
Hagerstown, MD 21742
- c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Ms. Janet Pointer, Accounting Specialist, Accounting Program
Mr. Jackson Bostic, Director, Southeast Regional Office
Missouri Clean Water Commission