
North Coast Regional Water Quality Control Board

February 23, 2023

Mr. Dean Soiland, President
BoDean Company, Inc.
1060 North Dutton Avenue
Santa Rosa, CA 95401
dsoiland@bodeanco.com

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Dear Mr. Soiland:

Subject: **Notice of Violation** of Stipulated Cease and Desist Order No. R1-2021-0027 (Order) for failure to comply with the Enhanced Sampling, Monitoring and Reporting requirements and of the General Permit for Stormwater Discharges Associated With Industrial Activities (Industrial General Permit or Permit) for failure to sample and report monitoring data and denial of rescission of the Order

File: Santa Rosa Hot Plant, 1060 Maxwell Drive, Sonoma County
WDID No. 1 49I017446

BoDean Company, Inc. (Discharger) is the operator of the Santa Rosa Hot Plant (Facility). The Discharger is hereby given notice that it is in violation the following provisions of the Order and the Permit:

1. Enhanced Sampling, Monitoring and Reporting, sections 4 and 6 of the Order
2. Sections and/or XI.B.2 and XXI.J.2 of the Permit

Per sections 4 and 6 of the Order, *“The Discharger shall continue to comply with Enhanced Sampling and Monitoring until:*

- (1) it returns to baseline status for TSS and;*
- (2) if it has no annual NAL exceedances for metals or other parameters identified in its updated SWPPP.”*

Per section 9 of the Order and Section XI.B.2 of the Permit, the Discharger is required to sample four Qualifying Storm Events (QSEs) during each reporting year and submit those samples to SMARTS within 30 days of obtaining all results for the sampling event. The Discharger is also required to submit any other monitoring data if it collects additional samples in accordance with Section XXI.J.2 of the Permit.

I. Background

The Discharger operates the Facility, a 6-acre asphalt batch Plant located at 1060 Maxwell Drive in Sonoma County. The Facility produces road base, asphalt concrete, and concrete aggregate.

Due to several annual Numeric Action Level (NAL) exceedances for Total Suspended Solids (TSS), the Facility's status moved from level 1 status to level 2 for this parameter in 2017. Annual NAL exceedances have occurred at the Facility for TSS during multiple reporting years from 2015-16 to 2020-21 reporting year.

On June 15, 2020, a Notice of Violation (NOV) letter was issued for failure to comply with the Industrial General Permit requirements.

On March 18, 2021, the Regional Water Board staff inspected the Facility during a QSE and collected samples from the single discharge location that drains the Facility's runoff to the public storm drain system. Per the sample results, high concentration of sedimentation (TSS), Aluminum (Al), Iron (Fe) and Magnesium (Mg) were detected in the Facility's runoff. Since the Facility remained out of compliance with the Permit requirements for failure to install adequate and effective Best Management Practices (BMPs), the second NOV letter was issued on May 18, 2021.

On August 31, 2021, a Stipulated Cease and Desist Order referenced above was adopted by the Regional Water Board directing the Discharger to submit a Best Management Practices (BMPs) Evaluation and Installation Report to the Regional Water Board, analyze the stormwater samples for additional analytical parameters including Aluminum, Iron and Magnesium, and then submit the enhanced sampling and monitoring reports.

Per the BMP evaluation and installation report and updated SWPPP submitted by the Discharger on October 15, 2021, an Advanced Treatment System (ATS) on October 2021 was installed and operated to treat the Facility's runoff prior to its discharge.

On September 23, 2022, the Discharger submitted a letter requesting the rescission of the Order on the basis that the Facility's status had been returned to baseline for TSS and that monitoring data showed no exceedances for other metals except Magnesium. The Discharger further described that Magnesium was no longer relevant to the Facility and should be removed from the Order since the Magnesium benchmark has been removed from the 2021 USEPA Multi Sector General Permit (MSGP).

On February 6, 2023, Regional Water Board staff conducted a follow up inspection of the Facility.

II. Alleged Violations

1. The Facility is required to continue to comply with the Enhanced Sampling, Monitoring and Reporting, sections 4 and 6 of the Order until both conditions outlined in said provision have been fully met.

The Facility has reported multiple exceedances for Magnesium, which is one of the required metals that must be monitored for under the CDO. As such, the fact that the Facility's status has been changed back to baseline for TSS by having four consecutive motioning results that are less than the annual NAL value does not relieve the Discharger from the requirement of this provision of the Order because the Discharger remains in Level 1 status for Magnesium.

Regional Water Board staff is aware of the updates to the 2021 MSGP issued by USEPA. However, the Discharger is regulated under the Industrial General Permit. The Permit has not been reissued, amended or modified in any way and stormwater discharges from the Facility remains subject to the Permit and the Order which includes monitoring and sampling requirements for Magnesium.

Magnesium is listed in Table 2 of the Permit and is a required parameter that must be monitored for per the Order.

2. The Facility is in violation of Section XI.B.2 of the Permit and Section 9 of the Order which requires the Facility to sample four QSEs during each reporting year and submit those samples to SMARTS within 30 days of obtaining all results for the sampling event. The Discharger is also required to submit any other monitoring data if it collects additional samples in accordance with the Permit and Order requirements.

According to Sampling Frequency Section XI.B.2 of the Permit, the Discharger is required to collect and analyze stormwater samples from each discharge location for two (2) QSEs within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Also, Per Section 9 of the Order and Section XXI.J.2 of IGP, the Discharger is required to submit any other monitoring data if it collects additional samples.

According to the documentation submitted by the Discharger to SMARTS, four samples were collected during the first half of reporting year 2021-2022, and no sample reports were submitted for the second half of the reporting year. A failure to conduct the required sampling data is a violation of the Permit and the Order.

During the most recent inspection conducted on February 6, 2023, BoDean Hot Plant Facility Manager, Mr. Nick Beck, confirmed that two samples were in fact collected during the second half of reporting year 2021-2022 in order to comply with the Permit

and the Order. However, these results have not been submitted to the Regional Water Board and therefore the Discharger is in violation of the Permit and the Order.

Given the Facility's non-compliance with the Stipulated Cease and Desist Order No. R1-2021-0027 and the Permit, your request for rescission of the Order is denied. All requirements remain in place and must be fully complied with. Note, you may be subject to additional enforcement for failure to comply with these provisions. California Water Code section 13385 authorizes the imposition of administrative civil liability for failure to comply with the Permit and the monitoring provisions of the Order in an amount not to exceed \$10,000 per each day of violation.

Should you have any questions, please contact Farzad Kasmaei of my staff at Farzad.Kasmaei@waterboards.ca.gov by email.

Sincerely,

Claudia E. Villacorta, P.E.
Assistant Executive Officer

cc: (Via e-mail only)

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