

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

FILED
October 17, 2023
3:03PM
U.S. EPA REGION 7
HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
SA Recycling, LLC) Docket No. CWA-07-2023-0098
St. Louis, Missouri)
)
Respondent) COMPLAINT AND
) CONSENT AGREEMENT /
) FINAL ORDER
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of 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, SA Recycling, LLC, 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 the conditions and limitations of the National Pollutant Discharge Elimination System (NPDES) Permit for the facility issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

4. Complainant is the Division Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

5. Respondent is SA Recycling, LLC, a limited liability company doing business in Missouri.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except 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 an 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 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States.”
9. Section 402 of the CWA provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
10. 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. It requires, in part, that a discharge of stormwater associated with industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.
11. Pursuant to Section 402(p) of the CWA, 33, U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.
12. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.
13. 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 stormwater and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.
14. Included in the categories of facilities considered to be engaging in “industrial activity” are facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as Standard Industrial Classification (SIC) 5015 and 5093. *See* 40 C.F.R. § 122.26(b)(14)(vi).
15. The Missouri Department of Natural Resources (MoDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

16. 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, authorizes the Administrator of EPA to assess civil penalties up to \$25,847 per day for each day during which the violation continues, up to a maximum of \$323,081, for violations of any permit condition or limitation implementing Section 402 of the CWA, 33 U.S.C. § 1342, that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

General Allegations

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

18. At all times relevant to this action, Respondent owned, operated, or otherwise controlled a scrap metal recycling and processing facility located at 300 East Nagel Street, St. Louis, Missouri (Facility). The Facility operates under SIC codes 5015 and 5093.

19. Respondent acquired the Facility in December 2021.

20. The Facility comprises approximately 19 acres, located immediately adjacent to and west of the Mississippi River. The Facility is a scrap metal recycling operation that handles ferrous and non-ferrous metals, and contains several buildings and storage areas. Scrap metal is stockpiled, processed, shredded and sorted at the Facility. Waste products are collected and shipped offsite. Most material storage for the Facility’s operations is outside.

21. The Facility has two permitted outfalls, Outfalls 001 and 002. Outfall 001 is located on the southeast portion of the Facility and Outfall 002 is located on the northeast portion of the Facility. Both Outfalls discharge to the Mississippi River.

22. Stormwater runoff and surface drainage flows east and southeast toward the west bank of the Mississippi River.

23. 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).

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

25. The Mississippi River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

26. Discharges from Outfalls 001 and 002, stormwater runoff, and surface drainage from Respondent's industrial activity at the Facility result in the addition of pollutants from point sources to navigable waters, and thus is the "discharge of pollutants" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

27. 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.

28. Effective January 1, 2019, MoDNR issued General State Operating NPDES Permit Number MOR60A360 to PSC Metals, LLC, for industrial stormwater discharges from the Site (Permit). The Permit expires on December 11, 2023. On July 26, 2022, MoDNR transferred the Permit to Respondent.

29. The Permit authorizes the discharge of stormwater runoff from the Facility subject to compliance with the conditions and limitations set forth in the Permit.

30. On June 7 and 9, 2022, EPA conducted a compliance evaluation inspection (EPA Inspection) of the Facility pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with the Permit and CWA. During the Inspection, the EPA inspector reviewed Respondent's records and obtained copies of documents related to the Permit, including 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.

31. EPA emailed to Respondent a copy of the Inspection report on July 26, 2022.

32. On July 14, 2023, Complainant and Respondent entered into an Administrative Order for Compliance on Consent, EPA Docket No. 07-2023-0054, requiring Respondent to take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of the alleged violations cited below, and to come into compliance with all applicable requirements of its NPDES Permit.

Findings of Violation

Count 1 Failure to Mark Outfalls

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

34. Permit Requirement No. 11 states that outfalls must be clearly marked in the field and periodically maintained to ensure visibility.

35. During the Inspection, EPA observed and documented that Outfalls 001 and 002 were not marked in the field.

36. Respondent's failures to mark Outfalls 001 and 002 are violations of the conditions and limitations of the Permit.

**Count 2
Failure to Identify Outfalls and Update SWPPP**

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

38. Permit Requirement No. 11 states that outfalls must be clearly marked in the field and periodically maintained to ensure visibility.

39. Permit SWPPP Requirement No. 5 states that throughout coverage under this Permit, the Facility must perform ongoing SWPPP review and revision to incorporate any site condition changes.

40. Permit SWPPP Requirements No. 6(a) and (b) states that the SWPPP must include a legible site map showing the site boundaries and outfalls, and an assessment of all stormwater discharges associated with the Facility, Facility activities, and Facility materials. This assessment must include a list of potential contaminants and an annual estimate of amounts that will be used or stored in the described activities.

41. During the Inspection, EPA observed and documented the following discharge points from the Facility to the Mississippi River that were not identified in the Permit and SWPPP:

- a. An area located at the far northeast corner of the Facility, which discharges stormwater runoff from the area near the shop building; and
- b. An area located a few yards south of the discharge point identified in Subpart (a), above, which discharges stormwater runoff from the area near the Tyvek building.

42. Respondent's failures to mark and identify outfalls and update the Permit, SWPPP, and SWPPP map to include these outfalls are violations of the conditions and limitations of the Permit.

**Count 3
Failure to Properly Manage Materials**

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

44. Permit Requirement No. 17 states that the Facility shall manage materials (products, stockpiles, waste piles, etc.) to ensure these materials are not transported off-site or into a water of the state during a high water event.

45. Permit SWPPP Requirement No. 7(h) states that the Respondent must provide good housekeeping practices on-site to keep solid waste from entering waters of the state.

46. During the Inspection, EPA observed and documented several areas where Respondent stored materials in a manner that would transport them to the Mississippi River during a rain event. These include:

- a. Stockpiles of scrap metal, waste materials, and debris in several locations along the bank of the Mississippi River, including near the unidentified discharge points described in Paragraph 41, above;
- b. An open dumpster lacking integrity full of gas cans, propane tanks, and other metal waste near the unidentified discharge points described in Paragraph 41, above; and
- c. Scrap metal, waste materials, and insulation foam scattered over the ground at the white goods receiving and processing area.

47. Respondent's failures to manage materials to ensure those materials are not transported off-site during a high water event and provide good housekeeping practices to keep solid waste from entering the Mississippi River are violations of the conditions and limitations of the Permit.

**Count 4
Failure to Update SWPPP**

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

49. Permit SWPPP Requirement No. 5 states that throughout coverage under this Permit, the Facility must perform ongoing SWPPP review and revision to incorporate any site condition changes.

50. At the time of the Inspection, Respondent's SWPPP was developed by the previous owner of the Facility and was not updated to include Respondent's representatives and any changes in stormwater management practices, training and inspection procedures.

51. Respondent's failures to review and revise the SWPPP to incorporate site changes are violations of the conditions and limitations of the Permit.

**Count 5
Failure to Implement BMPs and/or Inadequate BMPs**

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

53. Permit SWPPP Requirement No. 7(e) states that the following minimum Best Management Practices (BMPs) must be implemented at the Facility: sediment and erosion control sufficient to prevent sediment loss off of the property, pollution of waters of the state, and to comply with the conditions of the permit, Missouri Clean Water Law, and the CWA. This may require the construction of properly designed sediment basins or the use of straw bales, silt fences, or other treatment structures.

54. During the Inspection, EPA observed and documented that there were inadequate and missing controls at the following locations:

- a. Around the stockpile of scrap metal, waste materials, and debris located on the bank of the Missouri River including near the unidentified discharge points described in Paragraph 41, above;
- b. An open dumpster lacking integrity full of gas cans, propane tanks, and other metal waste near the unidentified discharge points described in Paragraph 41, above;
- c. Along the perimeter of the Facility there were inadequate and/or missing controls, including several areas where concrete blocks and coir rolls were missing and/or in need of repair and replacement.

55. Respondent's failures to implement minimum BMPs are violations of the conditions and limitations of the Permit.

Count 6

Failure to Conduct Inspections and Failure to Maintain Records

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

57. Permit SWPPP Requirement No. 6(d) states that the SWPPP must include a schedule for monthly site inspections and a brief written report, which includes the name of the inspector, signature of the inspector, and the date. The inspections must include observation and analysis of BMP effectiveness, deficiencies, and corrective action that will be taken as well as the integrity of the containment structure(s) including but not limited to above ground tanks, secondary containment, external piping, etc. Inspection reports must be kept with the SWPPP and must be made available to the Department upon request.

58. The EPA Inspection revealed that Respondent had not been conducting and documenting monthly site inspections to evaluate BMP effectiveness and taking corrective actions as needed.

59. Respondent's failures to conduct inspections, maintain inspection records, evaluate BMP effectiveness and document corrective actions taken are violations of the conditions and limitations of the Permit.

**Count 7
Failure to Conduct Training**

60. Permit SWPPP Requirement No. 6(g) states that the SWPPP must include a provision for providing training to all personnel involved in material handling, material storage, and housekeeping of areas having materials exposed to stormwater. Employees shall be trained on proper handling of oil, petroleum products, used mineral spirits, anti-freeze, mercury switches, lead acid batteries, and solvents. Proof of training must be made available to the Department upon request.

61. Respondent's SWPPP states that new employees undergo training concerning proper operating practices to avoid conditions which cause pollution; the effective use of BMPs; and proper scrap handling, inspection, and storage procedures. Additionally, these items along with housekeeping, cleanup, etc., are discussed in the routine safety meetings held at the plant.

62. The EPA inspection revealed that Respondent had not conducted employee training and did not have any training records.

63. Respondent's failures to conduct and document employee training are violations of the conditions and limitations of the Permit.

CONSENT AGREEMENT

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

65. 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.

66. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Complaint and Consent Agreement/Final Order.

67. 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.

68. 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.

69. Respondent consents to receive service of the filed Consent Agreement and Final Order electronically at the following email address: jmerrigan@spencerfane.com.

70. 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.

71. 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.

72. Respondent certifies by the signing of this Consent Agreement/Final Order that Respondent is in compliance with EPA's July 14, 2023, Administrative Order for Compliance on Consent, Docket No. CWA-07-2023-0054, which is intended to bring the Facility into compliance with the NPDES Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

Penalty Payment

73. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of \$68,000.

74. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to "Treasurer, United States of America," and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

75. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kasey Barton, Attorney
barton.kasey@epa.gov

76. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

77. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

78. 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.

79. 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.

80. 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.

81. 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.

82. 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

83. 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.

84. 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.

85. The state of Missouri 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).

86. 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.

87. 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:

**DAVID
COZAD**

Digitally signed by DAVID
COZAD
Date: 2023.10.12
15:32:10 -05'00'

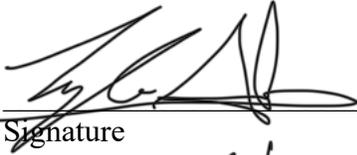
David Cozad
Director
Enforcement and Compliance Assurance Division

**KASEY
BARTON**

Digitally signed by KASEY
BARTON
Date: 2023.10.13 08:36:06
-05'00'

Kasey Barton
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, SA Recycling, LLC:



Signature

8/16/23

Date

Tyler Adams

Name

COO

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:

Jessie Merrigan, Attorney
Spencer Fane LLP
jmerrigan@spencerfane.com

Copy emailed to MoDNR:

john.hoke@dnr.mo.gov
Mr. John Hoke, Director
Water Protection Program
Division of Environmental Quality

Copy emailed to representatives for Complainant:

barton.kasey@epa.gov
Kasey Barton
EPA Region 7 Office of Regional Counsel

sans.cynthia@epa.gov
Cynthia Sans
EPA Region 7 Enforcement and Compliance Assurance Division

moreno.sarah@epa.gov
Sarah Moreno
EPA Region 7 Office of Regional Counsel

Signature