



REGION 1
BOSTON, MA 02109

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Mar 25, 2024
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U.S. EPA REGION 1
HEARING CLERK

IN THE MATTER OF

Everett's Auto Parts, Inc.
553 Thatcher Street
Brockton, Massachusetts

Respondent

Proceeding under Sections 309(g) and
311(b)(6) of the Clean Water Act,
33 U.S.C. §§ 1319(g), 1321(b)(6)

DOCKET NO: CWA-01-2024-0014

**ADMINISTRATIVE CONSENT
AGREEMENT AND FINAL ORDER**

1. The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 1 ("EPA") enters into this Consent Agreement and Final Order ("CAFO") with Everett's Auto Parts, Inc. ("EAP" or "Respondent"), under the authority of Sections 309(g) and 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(g), 1321(b)(6), and in accordance with applicable delegations and 40 C.F.R. §§ 22.13(b) and 22.18 of EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits* ("Consolidated Rules"), for the purpose of resolving alleged violations of Sections 301(a) and 311(j) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a), 1321(j).

2. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts of this action.

3. Pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i), 33 U.S.C. §§ 1321(b)(6)(C)(i),

1319(g)((4)(A), EPA provided public notice of, and reasonable opportunity to comment on, this action.

General Allegations

4. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

Stormwater Regulations

5. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership, [or] association."

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, garbage, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development

and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

12. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

13. 40 C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

15. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

16. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

17. 40 C.F.R. § 122.26(b)(14)(vi) specifies that facilities engaging in industrial activity include facilities classified as Standard Industrial Classification (“SIC”) code 5015 (Sector M: Automobile Salvage Yards) and SIC code 5093 (Sector N: Scrap Recycling Facilities).

18. 40 C.F.R. § 122.26(b)(14) specifies that the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among other things, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw

materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product.

19. On January 15, 2021, EPA reissued the NPDES Stormwater Multi-Sector General Permit for Industrial Activity (“2021 MSGP”). 86 Fed. Reg. 10269 (Feb. 19, 2021).

20. The 2021 MSGP contain terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharge associated with industrial activity.

21. The 2021 MSGP, in Appendix D, identifies SIC code 5015 as Sector M: Automobile Salvage Yards and identifies SIC code 5093 as Sector N: Scrap Recycling Facilities.

22. The 2021 MSGP, in Part 8, also includes Sector-Specific requirements for certain industrial activities identified in Part 8.

23. Sector M requirements are located in Part 8, Subpart M—Sector M—Automobile Salvage Yards. Sector N requirements are located in Part 8, Subpart N—Sector N—Scrap Recycling and Waste Recycling Facilities fall.

24. Under the 2021 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

25. Section 1.3.2. of the 2021 MSGP requires a Facility seeking permit coverage to submit to EPA a complete and accurate NOI that provides information on the Facility’s industrial activities and related discharges.

26. Section 6.2.2.3.j. of the 2021 MSGP requires the Facility’s SWPPP to identify each

Discharge Point (DP) and Section 6.2.5.3.d.vi. requires the Facility to explain the rationale for any Substantially Identical Discharge Point (SIDP) determinations.

27. Sections 3.2.4.5. and 4.1.1 of the 2021 MSGP allow a permittee that has two or more discharge points that discharge substantially identical stormwater effluents, based on the similarities of the general industrial activities and control measures, exposed materials that may significantly contribute pollutants to stormwater, and runoff coefficients of their drainage areas, to conduct quarterly visual assessments and monitoring of the discharge at just one of the discharge points and report that the results also apply to the SIDPs provided that the permittee conducts visual assessments on a rotating basis of each SIDP throughout the period of coverage under the permit.

28. Section 6.2.2.1 of the 2021 MSGP requires a permittee's SWPPP to describe the nature of the industrial activities at the Facility and Section 4.2.2.1 requires a permittee to monitor stormwater discharges for any benchmark parameters specified for both the primary industrial activity and any co-located industrial activities.

29. Parts 2.1.2.8.a., 6.2.5.1.e., and 8.M.2.2 of the 2021 MSGP require EAP to train all employees who work in areas where industrial materials or activities are exposed to stormwater, and to record the content, dates, and frequency of the training.

30. Part 6.2.2.3.m of the 2021 MSGP requires a permittee's site map to include liquid storage tanks (6.2.2.3.m.v.) and fueling stations (6.2.2.3.m.i.).

31. Part 6.2.2.3, Site map, requires that the SWPPP contain a site map that includes specific features, including, but not limited to: locations of all stormwater control measures (6.2.2.3.d.); locations of industrial activities exposed to precipitation (6.2.2.3.m.) and potential pollutant sources (6.2.2.3.g); direction of stormwater flows (6.2.2.3.c.); liquid storage tanks (6.2.2.3.m.v.), and locations of all Discharge Points (6.2.2.3.j.).

32. Sections 6.2.1, 6.2.3, and 6.2.4 of the 2021 MSGP require the permittee to conduct benchmark monitoring for the designated industry sector-specific pollutants, in this case Aluminum, Lead, and Total Suspended Solids (Sector M), and Chemical Oxygen Demand, Total Suspended Solids, Aluminum, Copper, Lead, and Zinc (Sector N).

33. Part 8.M.2 of the 2021 MSGP imposes Additional Technology-Based Effluent Limits on the permittee, which reference, and expand on, the stormwater management measures required by Part 2.1.2.6.

34. Part 8.M.3.1, Drainage Area Site Map, requires that a permittee document in its SWPPP the locations used for “dismantling, storing, and maintaining used motor vehicle parts,” and to also “identify where any of the following may be exposed to precipitation or stormwater: dismantling areas, parts (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers) storage areas, and liquid storage tanks and drums for fuel and other fluids.”

35. Part 8.M.3.2 of the 2021 MSGP, Management of Runoff (see also Part 2.2.2.6) requires implementation of control measures to minimize discharges of pollutants in stormwater runoff where determined to be feasible including, but not limited to: berms for uncovered outdoor storage of oily parts, engine blocks, and aboveground liquid storage; installation of detention ponds; and installation of filtering devices and oil and water separators.

36. Part 8.N.3.1.2 (Scrap and Waste Material Stockpiles and Storage (Outdoor)) of the 2021 MSGP requires permittees to “[m]inimize contact of stormwater with stockpiled materials, processed materials, and nonrecyclable wastes through implementation of control measures such as the following, where determined to be feasible (list not exclusive): permanent or semi-permanent covers; sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants; dikes, berms, containment trenches, culverts, and surface grading to divert stormwater from

storage areas; silt fencing; and oil and water separators, sumps, and dry absorbents for areas where potential sources of residual fluids are stockpiled (e.g., automobile engine storage areas).”

37. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of civil penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Oil Pollution Prevention Regulations

38. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA promulgated Oil Pollution Prevention regulations at 40 C.F.R. § 112 establishing procedures to prevent the discharge of oil from non-transportation onshore facilities into the waters of the United States or adjoining shorelines. Owners or operators of onshore facilities that, due to their location could reasonably be expected to discharge oil in “harmful quantities” into the waters of the U.S., must prepare and implement a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan as required by 40 C.F.R. § 112.3(a).

39. Forty C.F.R. § 112.2 requires owners or operators of subject facilities to review and evaluate the SPCC Plan at least every five years and to document the review and evaluation.

40. Forty C.F.R. § 112.7 establishes the general requirements for SPCC Plans.

41. Forty C.F.R. § 112.7 requires SPCC Plans to follow the sequence specified in § 112.7 or to include a supplement cross-referencing the location of requirements listed in § 112.7.

42. Forty C.F.R. § 112.7(a)(3)(iii) requires SPCC Plans to address “[d]ischarge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge[.]”

43. Forty C.F.R. § 112.7(a)(3)(iv) requires SPCC Plans to address “[c]ountermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor)[.]”

44. Forty C.F.R. § 112.7(a)(3)(v) requires SPCC Plans to address “[m]ethods of disposal of recovered materials in accordance with applicable legal requirements[.]”

45. Forty C.F.R. § 112.7(a)(5) requires portions of the SPCC Plan to describe, in a way that will make them readily usable in an emergency, procedures that owners or operators will use when a discharge including appropriate supporting material as appendices.

46. Forty C.F.R. § 112.7(g) requires SPCC Plans to describe how owners or operators “secure and control access to oil handling, process, and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; and address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.”

47. Forty C.F.R. § 112.8 establishes additional specific discharge prevention and containment procedures for SPCC Plans for on-shore facilities that are not production facilities as defined by 40 C.F.R. § 112.2.

48. Forty C.F.R. § 112.8(c)(2) requires subject Facilities to provide adequate secondary containment to prevent a discharge.

49. Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), provides for the assessment of penalties for owners, operators or persons in charge of onshore facilities that fail or refuse to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), such as the Oil Pollution Prevention regulations, found at 40 C.F.R. § 112.

Applicability to Respondent

50. EAP is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Brockton, Massachusetts.

51. Respondent is a “person” within the meaning of Sections 502(5) and 311(a)(7) of the CWA,

33 U.S.C. §§ 1362(5), 1321(a)(7), and 40 C.F.R. §§ 112.2 and 122.2.

52. Respondent is the owner and operator of an automobile salvage yard and scrap metal recycler located at 553 Thatcher Street, Brockton, Massachusetts. Previously, the two addresses adjacent to 553 Thatcher Street: 358 Thatcher Street, East Bridgewater, Massachusetts (“EAP2”); and 350 Thatcher Street, East Bridgewater, Massachusetts (“EAP3”), were permitted for stormwater separately from 553 Thatcher Street. Since at least June 2021, EAP has owned and operated all three addresses as one single entity (the “Facility”).

53. Since at least June 23, 2021 Respondent has conducted “industrial activity,” within the meaning of 40 C.F.R. § 122.26(b)(14)(ii) and 40 C.F.R. § 122.26(b)(14)(iii) at the Facility.

54. The Facility is an “onshore facility,” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

55. EAP is an owner or operator as defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. §§ 112.2 and 122.2.

56. EAP is engaged in storing “oil,” within the meaning of 40 C.F.R. §§ 112.1(b) and 112.2, at the Facility.

57. EAP has oil storage capacity greater than 1,320 gallons, which is the threshold established for exemption from Oil Pollution Prevention regulations applicability at 40 C.F.R. § 112.1(d)(2)(ii).

58. The Facility is a “non-transportation-related” facility within the meaning of Appendix A of 40 C.F.R. Part 112, as incorporated by reference in 40 C.F.R. § 112.2.

59. The Facility is not a production facility, as defined in 40 C.F.R. § 112.2.

60. Stormwater from the Facility associated with industrial activity discharges to Beaver Brook and Salisbury Plain River, which are waters of the U.S.

61. Due to its proximity to waters of the U.S., the Facility could reasonably be expected to discharge oil in harmful quantities (defined in 40 C.F.R § 110.3 to include discharges causing a film or sheen upon or discoloration of the surface of the water), into a navigable water or its adjacent shoreline.

62. As the owner and operator of a non-transportation-related facility engaged in storing oil or oil products that could reasonably be expected to discharge oil in quantities that may be harmful to navigable waters of the United States, EAP is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

63. EAP submitted an NOI for the 2021 MSGP on May 24, 2021 (“2021 NOI”).

64. The 2021 NOI identified four DPs 001, 002 (aka AP2-002), 003, and 004, as all discharging into Beaver Brook. The 2021 NOI identified all four DPs as being SIDPs to DP 001 located at the customer parking area, according to Sections 3.2.4.5 and 6.2.5.3(d) of the 2021 MSGP.

65. EAP2 submitted a NOI for the 2021 MSGP on May 24, 2021 (“EAP2 NOI”).

66. The EAP2 NOI identified one DP discharging to Beaver Brook.

67. EAP3 submitted a NOI for the 2021 MSGP on December 21, 2021 (“EAP3 NOI”).

68. The EAP3 NOI identified one DP (aka AP3) discharging to Beaver Brook.

69. EAP’s three 2021 NOIs— 2021 NOI, EAP2 NOI, and EAP3 NOI—only identified that Automobile Salvage (Sector M) activities occurred on-site and failed to identify Scrap Recycling (Sector N) even though the Facility was engaged in Scrap Metal Recycling activities at that time

70. On August 23, 2022, EPA conducted an inspection of the Facility (“2022 Inspection”).

71. On August 24, 2022, the day after the 2022 Inspection, EAP provided to EPA a SWPPP dated April 4, 2021, with a date of revision of November 30, 2021 (“2021 SWPPP”).

72. EAP submitted additional information to EPA on October 7, 2022, in response to the 2022

Inspection (“Inspection Response”).

73. As Appendix 8 of the Inspection Response, the Facility submitted a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan dated November 25, 2022.

74. The Facility stated in the Inspection Response that it eliminated DP 002 by extending an impermeable berm.

75. On October 28, 2022, EPA sent an information request letter (“2022 Letter”) under authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a), requesting that EAP provide information to EPA within 30 days of receipt.

76. On November 16, 2022, EPA received EAP’s response (“2022 Response”) to EPA’s 2022 Letter.

77. EAP’s Inspection Response stated that Facility began conducting required employee training on September 28, 2022.

78. On November 25, 2022, EAP submitted a NOI (“2022 NOI”) to change certain details within its permit application, and to combine the three previous NOIs into one NOI.

79. The 2022 NOI identified seven DPs, all discharging to Beaver Brook. Beaver Brook has a hardness of 51 mg/L. The NOI identified that both Automobile Salvage as well as Scrap Metal Recycling (Sectors M & N) occur on-site.

80. On March 15, 2023, EPA sent another information request letter (“2023 Letter”) to the Facility.

81. On March 31, 2023, EAP submitted an additional NOI (“2023 NOI”) to change certain details within its permit application.

82. The 2022 NOI and 2023 NOI added the DP referred to as the “Snow Gate” identified as DP 005 in the 2022 NOI and as DP 012 in the 2023 NOI. The 2022 NOI and 2023 NOI also added the DP

008 referred to as AP2.

83. The 2021 NOI, EAP2 NOI, and EAP3 NOI identify the hardness of Beaver Brook as either 262.5 mg/L or 260 mg/L. After EPA Inspectors noted in the 2022 Letter that this value is an order of magnitude different than samples taken by the Massachusetts Department of Environmental Protection (“MassDEP”) from a neighboring watershed with similar hydrologic characteristics, the Facility collected in-stream samples that showed Beaver Brook has a hardness of 51 mg/L. This changed the Facility hardness dependent benchmark threshold for Lead from 262 ug/L to 51 ug/L (see Appendix J of the 2021 MSGP) and Zinc from 260 mg/L to 80 ug/L (see Table 8.N-2 of the 2021 MSGP).

84. On April 15, 2023, EAP submitted a response to EPA’s 2023 Letter (“2023 Response”).

85. On May 19, 2023, EPA conducted a second inspection of the Facility (“2023 Inspection”).

86. On August 31, 2023, EPA issued an Administrative Compliance Order to Respondent requiring it to take certain actions to come into compliance with the 2021 MSGP.

Findings of Violation

87. The 2021 NOI, EAP2 NOI, and the EAP3 NOI together identified only six of the eight DPs present at the Facility in 2021.

88. The 2021 NOI identified all four DPs (DP 001, DP 002, DP 003, and DP 004) as being substantially identical to DP 001. Depicted on SWPPP maps, within the SWPPP narrative, and as observed by EPA Inspectors during the 2022 and 2023 inspections, EAP was conducting unique industrial activities within the catchment areas of discharge points DP 004 (currently DP 009 - crusher and vehicle draining), DP 002 (DP has been removed - oil water separator), DP 003 (currently DP 005 - parts storage, garage space, and access road), DP 001 (currently DP 006 - vehicle maintenance garage and access roads) thereby precluding DP 004 and 002 from being defined as SIDPs to DP 001 and DP 003.

89. EAP's site diagrams in its 2021 SWPPP did not show, or incorrectly showed, all required industrial activities and features. EAP's site diagrams did not show locations of all DPs, potential pollutant sources including material storage areas such as wet car storage areas, scrap metal piles, stormwater conveyances such as catch basins, stormwater sampling locations, and incorrectly labeled receiving waterbodies.

90. EAP's 2021 NOI, EAP2 NOI, and EAP3 NOI identified the Facility's sole industrial activity as Automobile Salvage (Sector M). However, Section 1.1 of the Facility's 2021 SWPPP stated that automobile recycling activities (Sector N) occur at the Facility in addition to Automobile Salvage. EPA inspector observations confirmed that EAP conducts both automobile salvage and automobile recycling activities at the Facility. Because EAP is conducting industrial activities that fall under Sector N, the Facility is required to monitor for three additional Sector N specific benchmark monitoring parameters: Chemical Oxygen Demand ("COD"), Zinc and Copper (see Section 8.N.7 of the 2021 MSGP), as well as hydrogen ion concentration ("pH") as an indicator monitoring parameter (see Section 8.N.6 of the 2021 MSGP) for all DPs where Sector N activities occur (i.e., DP 009 and DP 010).

91. During the 2022 Inspection, EPA Inspectors observed stormwater runoff discharging from then yet-to-be-identified DP 008. The discharge was highly turbid and had an oil sheen.

92. The location of the DP referred to as the "entrance" or "gate" (DP 001 in the 2021 NOI and DP 006 in the 2023 NOI) was historically unrepresentative of the industrial activities occurring within its catchment area that includes the weigh scale and vehicle maintenance garage. Beginning with the 2023 NOI, EAP moved this DP's location to behind the Facility's used car sales office.

93. During the 2022 Inspection, EPA Inspectors observed stormwater runoff flowing behind the used car sales office towards the new location of DP 001. The Inspectors observed an oil sheen on stormwater at this discharge.

94. During the 2022 Inspection, EPA Inspectors observed evidence of stormwater flow discharging from DP 012 (AKA “Snow Gate”) to the Salisbury Plain River, a traditional navigable water, after flowing through wetlands that have a continuous surface connection and are located directly next to the Facility. The 2022 NOI incorrectly identified Beaver Brook as the receiving water for DP 012 (or as it was referred to in the 2022 NOI, DP 007). The 2023 NOI corrected this error and EAP began sampling from DP 012 in Quarter 4 (Q4) of 2023.

95. During the 2022 Inspection, Facility representatives informed EPA Inspectors that the Facility does not conduct any specific stormwater training.

96. During the 2022 Inspection, Facility representatives stated that they do have aboveground oil storage tanks and fueling stations on-site. However, EAP did not identify any liquid storage containers or fueling stations on its site map.

97. During the 2022 and 2023 Inspections, EPA Inspectors observed the location at the Facility where EAP’s employees conducted car draining and crushing. EPA Inspectors observed that the drainage from this area discharged off the property, at Outfall 004, and into a wetland before flowing into Beaver Brook. One of the three vehicle draining racks was uncovered and EPA Inspectors observed that there were no stormwater pollution controls at the discharge point.

98. As explained by Facility representatives during the 2023 Inspection, a gravel rip rap gallery has been installed near DP 010 in an attempt to capture sediments within runoff from the graded area at the South of the site. During the 2023 Inspection, EPA Inspectors observed that the majority of the stormwater runoff from the catchment area is likely to bypass this best management practice, thereby allowing stormwater exposed to a large pile of scrap metal and unpaved ground to be discharged without any pollution controls.

99. EAP failed to properly conduct benchmark monitoring as required by the 2021 MSGP at

Discharge Points DP 005, DP 006 AND DP 009 for all other quarters between 2021 (Q4) through 2022 (Q2).

100. EAP failed to conduct benchmark monitoring as required by the 2021 MSGP at Discharge Point DP 012 for all quarters between 2021 (Q4) through 2022 (Q2).

101. At the time of EPA's 2022 Inspection, EAP failed to properly document its five-year SPCC Plan review and evaluation as required by 40 C.F.R. § 112.5(b).

102. At the time of EPA's 2022 Inspection, EAP failed to fully prepare and implement an SPCC plan as required by 40 C.F.R. § 112.3 consistent with the requirements in 40 C.F.R. §§ 112.7 and 112.8. Specifically, EAP failed to address “[d]ischarge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge” as required by 40 C.F.R. § 112.7(a)(3)(iii); failed to address “[c]ountermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor)” as required by C.F.R. § 112(7)(a)(3)(iv); failed to address “[m]ethods of disposal of recovered materials in accordance with applicable legal requirements” as required by 40 C.F.R. § 112.7(a)(3)(v); failed to describe, in a way that will make them readily usable in an emergency, procedures that owners or operators will use when a discharge including appropriate supporting material as appendices as required by 40 C.F.R. § 112.7(a)(5); and failed to describe security measures as required by 40 C.F.R. § 112.7(g).

103. At the time of EPA's 2022 Inspection, EAP had failed to provide secondary containment for all of its aboveground storage tanks as required by 40 C.F.R. § 112.8(c)(2).

104. From June 23, 2021 through the present, during certain wet-weather events, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from outfalls on the property into waters of the U.S.

105. By discharging stormwater from DPs DP 002, DP 007, DP 008, DP 009, DP 010, and DP

011 to waters of the U.S. in violation of the 2021 MSGP, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EAP violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from at least June 23, 2021 through present.

106. By discharging stormwater from DP 012 to waters of the U.S. without coverage under a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EAP violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from at least June 23, 2021, through July 12, 2023.

107. By discharging stormwater during certain wet-weather events from outfalls into waters of the U.S. without complying with the requirements of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from at least June 23, 2021 through present.

108. By failing to prepare and fully implement an adequate SPCC Plan in accordance with the Oil Pollution Prevention regulations, Respondent violated 40 C.F.R. Part 112 and, therefore, Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j) from at least the date of the 2021 Inspection through April 2023.

109. By failing to have sufficient spill containment for aboveground oil storage tanks, Respondent violated 40 C.F.R. Part 112 and, therefore, Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j).

Consent Agreement

110. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

111. Consistent with 40 C.F.R. § 22.18(b)(2), Respondent admits the jurisdictional allegations

set forth in this CAFO, and neither admits nor denies the factual or non-jurisdictional allegations set forth in this CAFO.

112. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B), 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B), 1321(b)(6)(G)(ii).

113. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$74,551 for all violations alleged in this CAFO.

114. Respondent shall pay the total penalty of \$74,551 within ten (10) calendar days of the date this CAFO becomes final.

115. In agreeing to the penalty set forth in paragraphs 113 and 114, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3), 1321(b)(8). The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

116. At the time of payment, Respondent shall simultaneously send notice of the payments or copies of the check via email to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
R1_Hearing_Clerk_Filings@epa.gov

and

Samuel Horowitz
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
horowitz.samuel@epa.gov

117. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C. §§ 1319(g)(9), 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Consent Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

118. The provisions of this CAFO shall apply to, and be binding on, Respondent, and Respondent's officers, directors, and successors or assigns. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

119. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein through the effective date of this CAFO.

120. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

121. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

122. Except as described in paragraph 117 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

123. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest or nonpayment penalties, and submitted the documentation required by this CAFO.

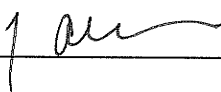
124. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Administrator or his or her properly authorized delegee.

125. Each undersigned representative of the parties to this Consent Agreement certifies

that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

126. Respondent agrees to acceptance of EPA's digital or an original signature on this CAFO and service of the fully executed CAFO on the Respondent by mail or electronically by e-mail at the email address provided under Respondent's signature. Respondent understands that the mailing or e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. EPA agrees to acceptance of the Respondent's digital or an original signature on this CAFO.

FOR EVERETT'S AUTO PARTS, INC.



Date: 2-5-2024

Tom Andrade
Director
Everett's Auto Parts, Inc.

Provide email address for service of fully executed CAFO on line below:

TANDRADE@EVERETTSAUTOPARTS.COM

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

FINAL ORDER

1. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A), 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date the signed CAFO is sent by the Regional Judicial Officer to the Regional Hearing Clerk for filing unless a petition to set aside the order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), 1321(b)(6)(C)(iii) and 40 C.F.R. Part 22.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1