

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Acme Foundry, Inc.) Docket No. CWA-07-2015-0110
Coffeyville, Kansas)
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE ON
) CONSENT
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent ("Order") are made and issued pursuant to Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency ("EPA") to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent is Acme Foundry, Inc. ("Respondent" or "Acme Foundry"), a corporation under the laws of the State of Kansas. Respondent is the owner and/or operator of a facility located within the corporate boundary of the City of Coffeyville, Montgomery County, Kansas.

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System ("NPDES") permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Acme Foundry to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent,

except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a NPDES permit issued pursuant to that Section.

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.

Stormwater

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

10. 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.

11. 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 storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 33, which includes establishments primarily engaged in primary metals. *See* 40 C.F.R. § 122.26(b)(14)(ii).

12. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) on September 1, 2006, which governs stormwater

discharges associated with industrial activity for categories of facilities generally involved in materials handling, manufacturing, transportation, or production. The KDHE reissued the General Permit in 2011, which is effective from November 1, 2011, through October 31, 2016.

14. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to the KDHE.

15. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention (“SWP2”) plan. The SWP2 plan must contain certain items which are specified in the General Permit, and the SWP2 plan must specify the Best Management Practices (“BMPs”) (structural, non-structural, and managerial/administrative) to be employed and what controls will be implemented to minimize the contamination of stormwater runoff associated with industrial activity from the site.

EPA’s General Allegations

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

17. Respondent is and was at all times relevant to this action the owner and operator of a gray and ductile iron foundry (“facility” or “site”), operating under SIC code 3321, comprised of approximately eleven acres located at 1502 South Spruce Street in Coffeyville, Kansas 67337.

18. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s site and discharge to an unnamed tributary, then to the Verdigris River.

19. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The Verdigris River and its tributaries identified in Paragraph 18, above, are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. Stormwater runoff from Respondent’s industrial activity at the above referenced site results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

23. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. Respondent filed a NOI with the KDHE seeking coverage under the General Permit on or about October 27, 2006.

25. The KDHE issued NPDES General Permit No. KS-R000038 (“Permit”) to Acme Foundry on October 28, 2008. The KDHE re-issued the NPDES permit on October 12, 2011, and it will expire on October 31, 2016. The Permit governs Respondent’s stormwater discharges that are associated with industrial activity at the site.

26. On March 19, 2015, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondents’ site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondents’ compliance with its Permit and the CWA. A Notice of Potential Violation was issued at the conclusion of the inspection. A copy of the Inspection report was sent to Respondent by letter dated June 16, 2015, which identified potential violations including those described below.

EPA’s Findings

Count 1 Unauthorized Discharge

27. The facts stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

28. Section 1.1 of Respondent’s Permit, Permit Area and Discharges Covered, authorizes both new and existing point source discharges of stormwater runoff associated with industrial activity to waters of the State of Kansas. Section 1.4 of Respondent’s Permit, Discharges Not Covered by this Permit, specifically states, in pertinent part, that the permit does not authorize the discharge of sewage, pollutants or wastewaters.

29. During the EPA Inspection, the inspector observed discharge from Outfall 001 that was black in color. The inspector observed that stormwater passed through the waste sand storage pile and other areas of the site with poor housekeeping before exiting through Outfall 001.

30. Respondent’s alleged discharge that contained pollutants and was not comprised entirely of stormwater was a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 2 Failure to Develop and Update an Adequate SWP2 Plan

31. The allegations stated in Paragraphs 1 through 30 above are re-alleged and incorporated herein by reference.

32. Section 2.1 of Respondent’s Permit requires development of a SWP2 plan that is specific to the industrial activity and site characteristics occurring at the permitted location described in the NOI. Section 2.1 of the Permit further requires full implementation of the SWP2 plan within ten (10) months of permit authorization and periodical review, and update as necessary, the provisions of their SWP2 Plan, as required under the general permit.

33. Section 2.4.1 of Respondent's Permit requires that specific individuals or positions be identified within the facility organization as members of a Stormwater Pollution Prevention Team who are responsible for developing, implementing, maintaining and revising the plan. Each member's responsibilities shall be clearly identified in the plan. The activities and responsibilities of the team must address all aspects of the facility's SWP2.

34. Section 2.4.2.b. of Respondent's Permit requires the SWP2 to contain a site map identifying, among other features, the location of significant structures; the outlined drainage areas, direction of flow, approximate acreage of each stormwater outfall; stormwater conveyances and area inlets for each outfall.

35. Section 2.4.6. of Respondent's Permit requires the SWP2 to be re-evaluated and modified in a timely manner, but in no case later than ninety (90) days after certain events or receipt of information. Events or information which may require revision of the SWP2 include, but are not limited to, a change in the design, construction operation or maintenance of the facility that has a significant effect on the potential to discharge pollutants; and results from a visual inspection or stormwater monitoring that indicate the plan is ineffective.

36. Respondent's SWP2 identifies Outfalls 001 and 002 in Section 1.3, page 3, and on site maps attached to the SWP2 as Appendix A, Figure 3. The SWP2 includes a list of SWP2 team member responsibilities in Section 2.0 and lists specific members of the team in Appendix C, Table 1.

37. Based on observations and information collected from the EPA Inspection and review of Respondent's SWP2 plan, Respondent failed to prepare an adequate SWP2 plan and/or amend the SWP2 plan after there was a change in design, construction, operation or maintenance at the Facility that had an impact on the potential to discharge pollutants or when controls were determined to be ineffective, as follows:

- a. The SWP2 plan failed to identify the current employees within the organization that are members of the team responsible for developing, implementing, maintaining and revising the SWP2; and
- b. Despite completion of quarterly outfall inspection worksheets dated September 14, 2012, and June 2, September 16 and November 3, 2014, indicating that discharges from Outfall 001 were black and/or murky, and thus, that the controls were ineffective, Respondent failed to amend the SWP2 plan.

38. Respondent's alleged failure to develop and update, as appropriate, an adequate SWP2 plan is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 3
Failure to Implement Measures and Controls

39. The facts stated in Paragraphs 1 through 38 above are re-alleged and incorporated herein by reference.

40. Sections 2.2 and 2.4.3 of the of Respondent's Permit requires the Respondent to review, evaluate, select, install, utilize, operate and maintain best management practices ("BMPs") in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility. At a minimum, Respondent's plan for BMPs must contain a listing and description of managerial/administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility, including a schedule, if necessary, for implementing such controls. Specific measures and controls identified in the permit include, but are not limited to, good housekeeping, preventative maintenance, sediment and erosion controls and management of runoff.

41. Section 4.1 of Respondent's Permit requires proper operation and maintenance, at all times, of all facilities and systems of treatment and control which are installed or used to achieve compliance with the requirements of the Permit.

42. During the EPA Inspection, the inspector observed that the Respondent had failed to implement and/or operate and maintain stormwater measures and controls, including the following:

- a. Non-stormwater runoff offsite and discharges of non-stormwater indicating adequate BMPs were not installed and maintained;
- b. Significant ground discoloration and black coke throughout the facility and especially at the southwest corner near Outfall 002; and
- c. Improper storage of old parts, mishandling of spills, and evidence of floatables in the surface runoff pathway.

43. Respondent's alleged failure to properly operate and maintain adequate measures and controls to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 4
Failure to Perform Facility Inspections

44. The facts stated in Paragraphs 1 through 43 above are re-alleged and incorporated herein by reference.

45. Section 2.4.3(d) of Respondent's NPDES permit, regarding facility inspections, requires identification of personnel trained to inspect at appropriate intervals designated

equipment and storage areas for raw material, finished product, chemicals, recycling, equipment, paint, fueling and maintenance; and areas for loading, unloading, and waste management areas. Inspection frequency shall be stated in the SWP2 Plan, but at a minimum, quarterly inspections shall be performed and a set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections, with records maintained of inspections and corrective actions.

46. Section 4.2.5 of Respondent's SWP2, page 17, addresses the procedures for facility inspections, as required by the Permit.

47. During the EPA Inspection, the inspector noted the Respondent had neither conducted nor documented facility inspections during three quarters in 2012, four quarters in 2013, and three quarters in 2014.

48. Respondent's alleged failure to perform facility inspections is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 5

Failure to Conduct Annual Comprehensive Site Compliance Evaluations

49. The facts stated in Paragraphs 1 through 48 above are re-alleged and incorporated herein by reference.

50. Section 2.4.4 of Respondent's NPDES permit requires comprehensive site compliance evaluations to be conducted at least once a year. Evaluations shall provide for visual inspection of areas contributing to stormwater discharges associated with industrial activity for evidence of, or the potential for, pollutants entering the stormwater drainage system. Evaluations shall also include evaluation of the measures used to reduce pollutant loadings and determine if additional measures are needed. The evaluation shall be recorded in a report summarizing the scope, personnel, and date of the evaluation, and any observations of non-compliance and resolution of non-compliance, or a statement that the facility is in compliance with the conditions of its permit.

51. During the EPA Inspection, the inspector noted that the facility has not conducted or made records of comprehensive site compliance evaluations in 2012 and 2013.

52. Respondent's alleged failure to conduct annual comprehensive site compliance evaluations is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 6

Failure to Conduct Visual Stormwater Monitoring

53. The facts stated in Paragraphs 1 through 52 above are re-alleged and incorporated herein by reference.

54. Section 2.4.5 of Respondent's NPDES permit states that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

55. During the EPA Inspection, the inspector noted that the facility failed to conduct or make records of a visual examination of stormwater quality in 2012 and 2013.

56. Respondent's alleged failure to conduct visual stormwater monitoring is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 7
Failure to Conduct Employee Training**

57. The facts stated in Paragraphs 1 through 56 above are re-alleged and incorporated herein by reference.

58. Section 2.4.3.e of Respondent's NPDES permit states that employee training programs to inform personnel responsible for implementing activities identified in the SWP2 Plan or otherwise responsible for stormwater management, at all levels of responsibility, of the components and goals of the SWP2 Plan. The SWP2 Plan shall provide for training existing and new staff.

59. Section 4.2.6 of Respondent's SWP2 provides that the storm water training program will be held at least annually, as required by the permit.

60. During the EPA Inspection, the inspector noted that the facility failed to conduct or make records of employee training in 2012, 2013 and 2014.

61. Respondent's alleged failure to conduct employee training is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Reasonable Time to Achieve Compliance

62. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that four (4) months is a reasonable time for Respondent to achieve compliance with its Permit and install and implement all appropriate stormwater controls.

Order for Compliance on Consent

63. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

64. In accordance with this Order, the Respondent shall immediately cease all discharges, except discharges of stormwater in compliance with the Permit, and shall take all necessary actions to comply with the conditions and limitations of its Permit.

65. By no later than July 1, 2016, Respondent shall provide a report to the EPA, with a copy to the KDHE that includes:

- a. A copy of an updated and revised SWP2 meeting all the requirements of the Permit;
- b. An outline of training provided to employees regarding the SWP2 since the March 19, 2015, EPA Inspection and a list of participants;
- c. A copy of the results from each visual monitoring event that has been conducted since the March 19, 2015, EPA Inspection;
- d. A copy of reports for each quarterly site inspection conducted since the March 19, 2015, EPA Inspection;
- e. A copy of the report generated from any annual comprehensive site evaluation that has been conducted since the March 19, 2015, EPA Inspection;
- f. A description of all actions taken and all structural controls installed and non-structural controls implemented since the March 19, 2015, EPA Inspection to bring the Facility into full compliance with all conditions and limitations of the Permit; and
- g. A description of all additional actions, structural controls and non-structural controls planned to bring the Facility into full compliance with all conditions and limitations of the Permit.

66. By no later than October 1, 2016, and April 1, 2017, Respondent shall provide to the EPA, with a copy to KDHE, a report containing, at a minimum, the following information for the previous six (6) months:

- a. A copy of the report for each visual monitoring event, quarterly site inspection and annual comprehensive site evaluation that has been conducted;
- b. A description of all employee training that has been conducted; and

- c. A detailed description of all actions, structural controls and non-structural controls that have been implemented or that are planned to bring the Facility into full compliance with all conditions and limitations of the Permit, including any updates or amendments to the SWP2.

Reports/Submissions

67. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 70 below, shall be submitted by electronic mail to:

sans.cynthia@epa.gov

Cynthia Sans, or her successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219

68. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

69. All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Tom Stiles, Acting Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

70. Each submission requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

71. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

72. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

73. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

74. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

75. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Termination

76. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

For the Complainant, U.S. Environmental Protection Agency:

Issued this 10th day of March, 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the Respondent, Acme Foundry:

Thomas A. Tatman
Signature

3/7/16
Date

THOMAS A. TATMAN
Name

PRESIDENT
Title

Certificate of Service

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

Thomas A. Tatman
President
Acme Foundry, Inc.
1502 Spruce Street
Coffeyville, Kansas 67337,

and via first class mail to:

Tom Stiles, Acting Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

3-15-2016
Date


Signature