



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2013 AUG 22 PM 1:16

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2013-0017

IN THE MATTER OF:)

THE BONE YARD)

5301 Monroe Street)

Denver, CO 80216)

Respondent)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 22nd Day of August, 2013

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

RECEIVED

MAY 29 2013

ECEJ

IN THE MATTER OF)
2013 JUN -5 PM 1:43)
The Bone Yard)
5301 Monroe Street)
Denver, CO 80216)
Respondent.)
_____)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Docket No. CWA-08-2013-0017

The Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant), and the Respondent, The Bone Yard (the Respondent), by their undersigned representatives, hereby consent and agree as follow:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) and (g)(2)(B) of the Clean Water Act (Act or CWA), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B).
3. For the purposes of this settlement only, the Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations.
4. The Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this CCCA, including any proceeding to enforce this CCCA.
5. The Complainant asserts that settlement of this matter is in the public interest, and the Complainant and the Respondent agree that entry of this CCCA and its incorporation into a final order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and potentially complicated litigation between the parties.

6. Upon integration into a final order by the EPA Regional Judicial Officer, this CCCA applies to and is binding upon the Complainant and upon the Respondent, and the Respondent's officers, directors, agents, successors and assigns. Any change in ownership, corporate organization, structure or status of the Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this CCCA unless the EPA, the Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities.

7. The Respondent shall notify the EPA at the address specified below thirty (30) days prior to any transfer described in or contemplated under the paragraph immediately above.

8. This CCCA contains all civil penalty settlement terms agreed to by the parties.

II. GENERAL ALLEGATIONS

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of any pollutant into waters of the United States except in compliance with a permit issued pursuant to section 402 of the Act.

10. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA and, upon receiving authorization from the EPA, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

11. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires an NPDES permit for storm water discharges associated with industrial activity.

12. Under section 402 of the Act, 33 U.S.C. § 1342, on November 15, 1990, the EPA promulgated regulations relating to the control of storm water discharges, found at 40 C.F.R. Part 122.

13. Under 40 C.F.R. § 122.26(b)(14)(ii) and (iii), storm water associated with industrial activity includes storm water discharges associated with industrial activity from facilities classified as Standard Industrial Classification 5015, among others.

14. The EPA has approved the State of Colorado's NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b).
15. The Respondent is and was at all relevant times a Colorado business doing business in Colorado.
16. The Respondent owns and/or operates an auto salvage yard located at 5301 Monroe Street, Denver, Colorado 80216 (the Facility).
17. At all times relevant to this action, the Respondent engaged in industrial activities, as defined by 40 C.F.R. § 122.26(b)(14), at the Facility.
18. On July 9, 2012, EPA inspectors visited the Facility and observed regulated storm water from the site discharging into a storm drain along Monroe Street, which discharges to the South Platte River.
19. The South Platte River is a "water of the United States" within the meaning of 40 C.F.R. § 122.2, and therefore a "navigable water" within the meaning of the definition set forth in section 502(7) of the CWA, 33 U.S.C. § 1362(7).
20. The Respondent is, and was at all relevant times, a "person" within the meaning of the definition set forth in section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. The Facility's Standard Industrial Classification (SIC) code is 5015.
22. Runoff and drainage from the facility is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).
23. Storm water coming into contact with a regulated industrial activity contains "pollutants" as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).
24. Storm water discharged from the facility is the "discharge of a pollutant" as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
25. The Facility constitutes a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

III. DESCRIPTION OF THE VIOLATIONS

26. As described above in paragraph 18, the Respondent discharged regulated storm water from the Facility to the South Platte River.
27. At the time of the discharge described in paragraph 18, the Respondent had not obtained a Colorado Discharge Permit System General Permit for Stormwater Discharges from the Colorado Department of Public Health and the Environment.
28. The Respondent's unpermitted discharge described above constitutes a violation of section 301 of the Act, 33 U.S.C. § 1311.

IV. CIVIL PENALTY

29. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and after consideration of the facts of this case as they relate to the factors set forth in section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), including the fact that Respondent has since obtained the required permit, as well as the Respondent's ability to pay, and Respondent's economic benefit, the EPA has determined that a civil penalty of one thousand four hundred dollars (\$1,400.00) is appropriate to settle this matter.
30. The Respondent consents and agrees to pay a civil penalty in the amount of one thousand four hundred dollars (\$1,400.00) in the manner described below.
31. Payment by the Respondent of the full penalty is due within thirty (30) calendar days of the Respondent's receipt of the Final Order issued by the EPA Regional Judicial Officer adopting this CCCA. If the due date for payment falls on a weekend or a legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
32. Payment shall be made by one of the following methods:
- a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for \$1,400.00, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

b. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 680107272
Environmental Protection Agency"

c. **Online Payment:**

This option is available through the Department of the Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

d. A copy of the check or record of payment if made by other means shall be sent to:

Monia Ben-Khaled
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

34. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1st late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.

35. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

36. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

V. OTHER TERMS AND CONDITIONS

37. Failure by the Respondent to comply with any of the terms of this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the Department of Justice for enforcement of this CCCA and for such other relief as may be appropriate.

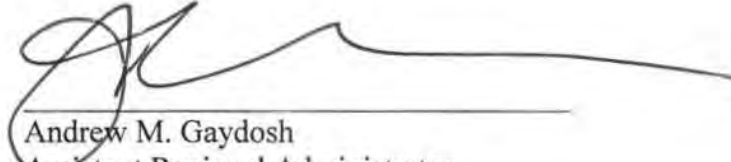
38. Nothing in this CCCA shall be construed as a waiver by the Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the Respondent's failure to perform pursuant to the terms of this CCCA.

39. Each undersigned representative of the parties to this CCCA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CCCA and to execute and legally bind that party to the CCCA.
40. This CCCA may be executed in counterparts.
41. Upon execution by the parties, this CCCA shall be subject to a public comment period of not less than forty (40) days, pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45. The EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations indicating that the CCCA is inappropriate, improper, or inadequate.
42. If comments received during the public comment period do not require modification or withdrawal by the EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer following closure of the public comment period, with a request that is be incorporated into a Final Order.
43. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this CCCA.
44. This CCCA resolves the Respondent's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for the violations alleged in this CCCA. This CCCA shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this CCCA. This CCCA shall not affect the Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
45. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.

Date: 6/5/2013



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

THE BONE YARD

Respondent.

Date: 5/23/13



Name: Darren Mustapha
Title: President

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON A
COMBINED COMPLAINT AND CONSENT AGREEMENT BETWEEN
BONE YARD AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
TO RESOLVE ALLEGED VIOLATIONS OF
THE CLEAN WATER ACT**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on the Combined Complaint and Consent Agreement (CCCA) between Bone Yard (Respondent), and the United States Environmental Protection Agency (EPA), bearing Docket # CWA-08-2013-0017. EPA alleged that the Respondent violated the requirements of the Clean Water Act (CWA) by failing to seek and obtain a discharge permit for the discharge of regulated stormwater to "Waters of the United States". The CCCA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by Title 40 of the Code of Federal Regulations (40 C.F.R.), Section 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). In the CCCA, Respondent agrees to pay a penalty of \$1,400. The alleged violations took place at Bone Yard, 5301 Monroe Street, Denver, Colorado 80216. The CCCA is issued under the National Pollutant Discharge Elimination System (NPDES) provisions of the CWA. These regulations govern the discharge of wastewater to "Waters of the United States". The addresses of EPA and respondent are listed here.

Respondent: Bone Yard, 5301 Monroe Street, Denver, Colorado 80216.

EPA: Assistant Regional Administrator, Office of Enforcement, Compliance & Environmental Justice, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

The EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that any penalty assessed is appropriate.

PUBLIC COMMENTS

Written comments on the CCCA are encouraged and will be accepted at the address listed below for a period of forty (40) days after the publication of this notice. Written comments submitted by the public as well as information submitted by Respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and

on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf> by searching for the company name or Docket #.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129.
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until 40 days after this public notice.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **The BONE YARD; DOCKET NO.: CWA-08-2013-0017**. The **CONSENT AGREEMENT** was filed June 5, 2013 The **FINAL ORDER** was filed with the Regional Hearing Clerk on August 22, 2013.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Linda Kato, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and emailed on August 22, 2013, to:

Dareen Musteroha, President
The Bone Yard
5301 Monroe Street
Denver, CO 80216
dareenhamed@gmail.com

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 22, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk