

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2021-0039
River Trading Company, LLC)	
)	
)	
Respondent)	CONSENT AGREEMENT AND 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 Federal Water Pollution Control Act, commonly referred to as 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”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency, Region 7 (“EPA”) and Respondent, River Trading Company, LLC (“Respondent”) 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 the Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. Respondent River Trading Company, LLC is and was at all relevant times a limited liability company under the laws of the state of Iowa.

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 National Pollutant Discharge Elimination System (“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.

8. Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. § 122.2.

9. 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.

10. 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.

11. 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.

12. 40 C.F.R. § 122.26(b)(14)(vii) considers Steam electric power generating facilities, including coal handling sites, to be facilities that are associated with industrial activity.

13. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. IDNR issued Iowa General Permit No. One for Storm Water Discharge Associated with Industrial Activity (“General Permit”) with an effective date of March 1, 2018 and expiration date of February 28, 2023. The General Permit governs Respondent’s stormwater discharges associated with industrial activity at the Site.

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

16. The General Permit requires that a Stormwater Pollution Prevention Plan (“SWPPP”) be prepared and implemented for each facility covered by the permit. The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the storm water discharge from the industrial activities, describe and ensure the implementation of best management practices (“BMPs”) which will be used to reduce the pollutants in storm water discharge associated with industrial activity at the site and to assure compliance with the terms and conditions of the permit. The permit further requires the permittee at all times to properly operate and maintain all facilities and systems of treatment and controls which are installed or used by the permittee to achieve compliance with the conditions of the permit and with the requirements of the SWPPP.

EPA’s General Allegations

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

18. River Trading Company, LLC is and was at all times relevant to this action the owner and operator of the 46.74 acre property, a coal handling facility, located at 2585 Pettibone Avenue, Muscatine Iowa.

19. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s site and discharge through various drainage pathways to the Mississippi River. The Mississippi River is designated for aquatic life use, human health, and primary contact recreation.

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

21. 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).

22. The Mississippi River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

23. 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).

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

25. Respondent filed an NOI with IDNR seeking coverage under the General Permit on or about December 28, 2017.

26. On August 3-4, 2020, EPA conducted an Industrial Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondent’s site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.

27. During the Inspection and shortly thereafter, the EPA inspector reviewed and obtained copies of Respondent’s documents related to the Permit, including, but not limited to, the site’s SWPPP and site inspection and self-monitoring records. The EPA inspector also toured the site and photographed various stormwater-related areas.

28. A copy of the Inspection report was sent to Respondent by letter dated September 16, 2020, which identified potential violations including those described below.

29. A Notice of Potential Violation (“NOPV”) was issued by the EPA inspector on August 31, 2020. Respondent provided a written response to the NOPV on September 8, 2020.

EPA’s Allegations

Failure to Implement Adequate Control Measures

30. Paragraphs 1 through 29 are re-alleged and incorporated herein by reference.

31. Part VI.M Proper Operation and Maintenance of the “Standard Permit Conditions” section of the NPDES Permit, requires that the permittee at all times properly operate and maintain all facilities and systems of treatment and controls which are installed or used by the permittee to achieve compliance with the conditions of the permit and with the requirements of the SWPPP.

32. During the Inspection referenced above, the EPA inspector observed a significant amount of accumulated coal and ground discoloration at the bank of the Mississippi River and evidence of coal entering the river due to lack of best management practices and poor

housekeeping practices. Review of aerial imagery over the years demonstrates that, at a minimum, this has been an ongoing problem on the following dates: September 27, 2017, October 21, 2018, April 25, 2019, and July 25, 2020.

33. Respondent's alleged failure to properly operate and maintain its facility led to the discharge of pollutants from the Site and is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

CONSENT AGREEMENT

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

36. 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.

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

38. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

39. 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.

40. The undersigned representative(s) of Respondent certify that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

41. 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. Respondent further agrees to email service at the following email address: tpenrod@rtcltd.com.

42. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of Respondent's knowledge and belief the site is in compliance with Iowa General NPDES Permit No. 1, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations based on Respondent's inquiry of the person or those persons directly responsible for ensuring compliance.

Penalty Payment

43. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Sixty Thousand Seven Hundred Fifty Dollars (\$60,750)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below. Respondent shall pay the penalty by certified or cashier's check (or as identified in Appendix A) payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

The check must also be annotated with the docket number and name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Liz Huston
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

44. 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.

45. Respondent understands that, pursuant to 40 C.F.R. § 13.18, 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

46. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

47. 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.

48. 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.

49. 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

50. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

51. 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. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

52. The state of Iowa 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).

53. 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.

54. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

7/29/21

Date

JODI
BRUNO

Digitally signed by JODI
BRUNO
Date: 2021.07.29
07:10:30 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

ELIZABETH
HUSTON

Digitally signed by
ELIZABETH HUSTON
Date: 2021.07.29
07:39:10 -05'00'

Elizabeth Huston
Office of Regional Counsel

For the Respondent River Trading Company, LLC:

Michael C. Brett
Signature

5-11-2021
Date

Michael C. BRETTE
Name

MEMBER
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

**APPENDIX A
PENALTY PAYMENT INFORMATION**

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ONLINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "SFO 1.1" in the search field

Open form and complete required fields.