



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 21 2016

CERTIFIED MAIL 7015 1730 0001 8044 3330
RETURN RECEIPT REQUESTED

Mr. W. Scott McGeorge
President, Pine Bluff Sand and Gravel Company
P.O. Box 7008
Pine Bluff, Arkansas 71611

Re: Consent Agreement and Final Order, Docket No.: CWA-04-2016-4509(b)
Pine Bluff Sand and Gravel Company

Dear Mr. McGeorge:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order which has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Administrator. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions regarding this matter, please contact Ms. Wilda Cobb, Associate Regional Counsel, at (404) 562-9350 or via email at cobb.wilda@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Enforcement Branch Chief
Eighth Coast Guard District

Mr. Anthony Loston, EPA Region 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING CLERK
2016 JUN 21 AM 11:16
REGIONAL

IN THE MATTER OF:)
)
PINE BLUFF SAND AND GRAVEL) CONSENT AGREEMENT AND
COMPANY) FINAL ORDER
PINE BLUFF, ARKANSAS,)
)
RESPONDENT.) DOCKET NO. CWA-04-2016-4509(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the NPDES Permitting and Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. Pine Bluff Sand and Gravel Company ("Respondent") is a corporation doing business in the State of Arkansas, and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this Consent Agreement and Final Order ("CA/FO"), the Respondent owned and/or operated a total of 200 commercial vessels of various configurations that are greater than or equal to 79 feet in length and subject to terms and conditions of the National Pollution Discharge Elimination System ("NPDES") Vessel General Permit for Discharges Incidental to the Normal Operations of Vessels ("VGP"), in navigable waters of the U.S.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of

the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. A "discharge of a pollutant", as defined by Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

7. A "point source", as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), is a "discernible, confined and discrete conveyance" and includes a "vessel or other floating craft."

8. The term "navigable waters", as defined by Section 502(7), 33 U.S.C. § 1362(7), means waters of the United States, including territorial seas.

9. On December 29, 2008, the EPA announced in the Federal Register issuance of a final NPDES Vessel General Permit ("VGP"), effective December 19, 2008, regulating point source discharges associated with discharges incidental to the normal operations of vessels into "waters of the United States" as defined in 40 C.F.R. 122.2, which extend to the outer reach of the 3 mile "territorial seas" as defined in section 502(8) of the CWA, 33 U.S.C. § 1362(8). See 73 Fed. Reg. 79473.

10. The VGP that became effective on December 19, 2008, applies to owners and operators of non-recreational vessels that are 79 feet and greater in length as described in Part 1.2.1 of the VGP. See 73 Fed. Reg. at 79477. If such a vessel is greater than or equal to 300 gross tons or has the capacity to hold or discharge more than eight cubic meters (2113 gallons) of ballast water, it is required to submit a Notice of Intent ("NOI") to the EPA to receive coverage under the VGP in accordance with Part 1.5.1 of the VGP. The VGP was reissued on April 12, 2013 with an effective date of December 19, 2013, and an expiration date of December 19, 2018. (See 78 Fed. Reg. 21,938)

11. Part 1.5.1.1 (Vessels Required to Submit Notices of Intent), of the VGP provides that vessels greater than or equal to 300 gross tons or vessels with the capacity to hold or discharge more than 8 cubic meters (2,113 gallons) of ballast water, must submit a signed and certified, complete and accurate Notice of Intent (NOI).

12. Part 1.5.1.2 (Vessels Not Required to Submit Notices of Intent), of the VGP provides that vessels less than 300 gross tons and that do not have the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water, must complete and maintain the Permit Authorization and Inspection Form ("PARI") found in Appendix K, and keep a copy of that form onboard the vessel at all times. The PARI form is used to record annual inspections required under Part 4.1.3 of the VGP and acknowledges that an owner/operator is familiar with the VGP and is implementing all permit requirements under the VGP.

13. On November 13, 2015, the EPA sent an Information Request letter pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to the Respondent requesting information regarding vessels owned and operated by Respondent to determine compliance with requirements of the VGP.

14. As a result of EPA's review of the Respondent's response to the Information Request, the EPA made the following observations and determinations:

a. During the period of December 19, 2008, through December 23, 2015, Respondent owned and/or operated the vessels listed in Attachment 1 that are greater than or equal to 300 gross tons or have the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water and which discharged pollutants incidental to the normal operation of the vessels into navigable waters of the United States without obtaining a VGP, and is therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

b. During the period of December 19, 2008, through December 23, 2015, Respondent owned or operated two vessels listed in Attachment 2 that are greater than or equal to 79 feet and less than 300 gross tons and not capable of holding or discharging more than 8 cubic meters (2113 gallons) of ballast water, without maintaining a Permit Authorization and Inspection Form ("PARI") as required for these vessels under Part 1.5.1.2 of the VGP, and is therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

15. Therefore, the Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311.

III. Stipulations and Findings

16. The Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

17. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above. The Complainant asserts that the facts are true and substantiated.

18. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

19. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

20. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

21. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

22. The Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

23. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Thirty-Eight Thousand Three Hundred and Ninety Seven Dollars (\$ 38,397) is an appropriate civil penalty to settle this action.

24. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the Effective Date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

25. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

And

Mr. Dennis Sayre
U.S. Environmental Protection Agency, Region
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

26. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

27. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

28. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

29. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation, or permit.

30. Except as otherwise set forth herein, this CA/FO constitutes a settlement by the Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, the Complainant does not waive any right to bring an enforcement action against the Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

31. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

32. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

33. Any change in the legal status of the Respondent, including, but not limited to, any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

34. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

35. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Ms. Wilda Watson Cobb
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9530

For the Respondent:

Mr. Richard E. Glaze, Jr.
Balch and Bingham, LLP
30 Ivan Allen, Jr. Boulevard, NE
Suite 700
Atlanta, Georgia 30308-3036
(404) 962-3566

36. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

37. Effective upon signature of this CAFO by the Respondent's responsible corporate officer, the Respondent agrees that the time period commencing on the date of his signature and ending on the date the EPA receives from Respondent the payment required by this CAFO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CAFO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and

may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CAFO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

38. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Mississippi was provided a prior opportunity to consult with the Complainant regarding this matter.

VI. Release by the Respondent

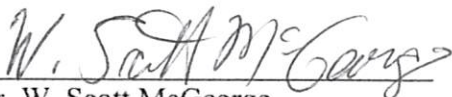
39. The Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the matters addressed and resolved in this CA/FO, including, but not limited to any claim that any of the matters or actions described in this CA/FO have resulted in a taking of the Respondent's property without compensation.

VII. Effective Date

40. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


For RESPONDENT, PINE BLUFF SAND AND GRAVEL COMPANY:



Mr. W. Scott McGeorge
President
Pine Bluff Sand and Gravel Company

Date: April 19, 2016

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Giattina
Director
Water Protection Division
U.S. EPA, Region 4

Date: 6/14/2016

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4


IN THE MATTER OF:)
)
PINE BLUFF SAND AND GRAVEL) CONSENT AGREEMENT AND
COMPANY) FINAL ORDER
PINE BLUFF, ARKANSAS,)
)
RESPONDENT.) DOCKET NO. CWA-04-2016-4509(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: JUN 20 2016


Heather McTeer Toney
Regional Administrator

Docket No. CWA 04-2016 -4509(b)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Pine Bluff Sand and Gravel Company, Ltd.**, Docket No. CWA-04-2016-4509(b) filed with the Regional Hearing Clerk on 6-21, 2016, was served on 6-21, 2016, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Wilda Cobb
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By certified mail,
return receipt requested: Mr. Richard E. Glaze, Jr.
Balch and Bingham, LLP
30 Ivan Allen, Jr. Boulevard, NE
Suite 700
Atlanta, Georgia 30308-3036



Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
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Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9813