

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

LKQ CORPORATION, AND
LKQ SOUTHEAST, INC., ,

Respondents.

Docket No. CWA-04-2022-0306(b)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2) (B), (CWA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 309(g)(2)(B) of the CWA.
5. Respondents are LKQ Corporation and LKQ Southeast, Inc (Respondents), corporations duly organized and existing under the laws of the State of Delaware doing business in the [State of

Alabama]. This proceeding pertains to Respondents' facility located at 24559 State Highway 79 North, Trafford, Alabama (Facility).

III. GOVERNING LAW

6. 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.
7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Alabama, through the Alabama Department of Environmental Management (ADEM), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.
8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source . . ."
9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" as "[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . 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 "[t]he waters of the United States, including the territorial seas."
11. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Alabama was provided a prior opportunity to consult with the Complainant regarding this matter.
12. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

IV. FINDINGS OF FACTS

13. ADEM issued the NPDES General Permit for discharges from construction activities that result in a total land disturbance of one acre or greater, Permit No. ALR100000 ("Alabama Construction General Permit" - CGP). The Construction Stormwater Permit became effective on April 1, 2016, and expires on March 31, 2021. Coverage under the Permit is obtained by submitting a Notice of Intent ("NOI") to ADEM.

14. ADEM issued the NPDES General Permit for Stormwater Discharges from Industrial Activities Associated with the Salvage and Recycling Industry, Permit No. ALG18000 (“Alabama Industrial General Permit” - IGP). The Industrial Stormwater Permit became effective October 1, 2017, and expires on September 30, 2022. Coverage under the Permit is obtained by submitting a Notice of Intent (“NOI”) to ADEM.
15. On June 13, 2017, Respondents submitted an NOI to ADEM requesting coverage under the Industrial General Permit for the Facility. The authorization became effective on October 1, 2017, expires on September 30, 2022, and requires Respondents to comply with all provisions of the Permit.
16. On October 28, 2020, the EPA sent an Information Request Letter (“Information Request”), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Respondents requesting information related to Respondents’ management of stormwater at the Facility to assess compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permits.
17. Respondents’ responses to the Information Request were received by the EPA on November 13, 2020.
18. On November 10, 2020, the EPA and ADEM performed a Compliance Stormwater Evaluation Inspection (CSWEI) to evaluate Respondents’ treatment of stormwater at the Facility to assess compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permits.
19. During the CSWEI of the Facility, EPA’s inspectors observed:
 - (a) The facility had undergone recent expansions resulting in clearing and grading of approximately 65 acres. This construction activity had been performed without obtaining coverage under the Alabama Construction General Permit.
 - (b) The NOI and best management practices (BMP) plan for the site did not reflect the current site conditions. Specifically, the plan failed to reflect the current acreage at the site, the immediate receiving water, and the current number of outfalls.
 - (c) The best management practices at the facility were not all implemented in accordance with the site plan and standard practices. Specifically, the facility did not adhere to stream buffer requirements and outfall structures were not constructed in accordance with the BMP plan.
20. On July 9, 2021, EPA issued a Notice of Violation and an Opportunity to Show Cause (to the Respondents) pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319. On August 17, 2021, EPA held, and the Respondents participated in, a show cause meeting.

V. ALLEGED VIOLATIONS

21. At all times relevant to this action, Respondents are a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
22. At all times relevant to this action, the Respondents owned and/or operated the Facility.

23. As a result of the CSWEI, the information obtained from the Information Request, and information received at and following the show cause meeting, the EPA has determined that stormwater associated with both construction and industrial activities were discharged from the Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into waters of the United States.
24. Based on the CSWEI and review of additional information, the Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, due to Respondents' failure to comply with the Permits and the CWA implementing regulations, and due to discharges not authorized by a NPDES permit. Specifically, the EPA alleges the following violations:
- (a) Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p) and regulations promulgated thereunder at 40 C.F.R. § 122.26 require individuals in Alabama to obtain permit coverage under the State of Alabama's Construction General Permit Number ALR100000 for construction activities resulting in land disturbances equal to or greater than one (1) acre. During the period of 2018 to 2019, the facility underwent a substantial expansion resulting in the addition of approximately 65 acres. This expansion entailed the clearing and grading of land both west and south of the original facility footprint along the tributary to Dry Creek. According to facility personnel, the facility underwent this expansion and construction activity without obtaining coverage under the Alabama NPDES Construction General Permit. As such, discharges of stormwater during the expansion and construction activity were unpermitted and unauthorized.
 - (b) Part III(B) of the Alabama Construction General Permit requires that a 25-foot undisturbed natural riparian buffer zone to all waters of the State adjacent to or contained within the overall boundary of the construction site be maintained. During the EPA's CSWEI, the recently expanded areas of the facility were observed as having encroached on the required 25-foot stream buffer for the tributary to Dry Creek along the west side of the site.
 - (c) Part II(F)(2) of the Alabama Industrial General Permit requires permittees to provide notice at least 180 days in advance of any facility expansion, production increase, process change, or other action that could result in the discharge of additional pollutants. In 2018, the facility completed its expansion, clearing and grading an additional 65 acres for use at the site. The facility underwent this expansion without providing the necessary notice to the state until November 2020.
 - (d) Part IV(A)(4)(d) of the Alabama Industrial General Permit requires the BMP Plan be amended whenever there is a change in the facility or change in operation of the facility resulting in a discharge of significant amounts of pollutants.
 - (e) During the EPA's CSWEI, inconsistencies were observed between what was seen at the site and what was depicted in the BMP plan. Specifically, there was uncertainty with the facility pertaining to the locations of the outfalls, discharge points for specific areas of the facility, and additional drainage features not identified in the plan. Additionally, with the facility completing its major expansion in 2018, the BMP plan was not modified to reflect these changes until November 2020.

- (f) Part II(B)(2)(c) of the Alabama Industrial General Permit requires the permittee to prepare and implement a BMP plan according to Part IV of the permit. Part IV(A)(1)(a) of the Alabama Industrial General Permit requires the BMP Plan to include measures sufficient to prevent or control pollution of storm water by particles. Part IV(A)(1)(a) also requires the BMP Plan to include erosion controls. During the EPA's CSWEI, erosion features were observed forming in areas along the west side of the site leading to the adjacent tributary. The erosion control measures identified in the BMP Plan and implemented at the site failed to adequately prevent and/or control pollutants from entering into stormwater.

VI. STIPULATIONS

25. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:
- (a) admit that EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admit nor deny the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consent to the assessment of a civil penalty as stated below with the understanding that Respondents are jointly and severally liable for payment of the full civil penalty amount];
 - (d) consent to the conditions specified in this CAFO;
 - (e) waive any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waive their rights to appeal the Final Order accompanying this CAFO.
27. For the purpose of this proceeding, Respondents:
- (a) agree that this CAFO states a claim upon which relief may be granted against Respondents;
 - (b) acknowledge that this CAFO constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;
 - (c) waive any rights they may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action;
 - (d) waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

- (e) agree to comply with the terms of this CAFO.
28. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.
29. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CAFO based on comments received during the public comment period.

VII. TERMS OF PAYMENT

30. Respondents consent to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of \$250,000.00, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
31. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondents send payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondents send payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondents shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33

33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondents shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

32. Respondents shall send proof of payment within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Ahmad Dromgoole
Enforcement and compliance Assurance Division
Water Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
dromgoole.ahmad@epa.gov

33. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and "Docket No. CWA-04-2022-0306(b)."

34. Pursuant to 33 U.S.C. § 1319(g)(9), if Respondents fail to timely pay any portion of the penalty assessed under this CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any portion overdue:

- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO,

Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed currently prevailing rates.

- (b) Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9); and
 - (c) Attorneys' Fees and Costs of Collection. The United States' attorneys' fees and costs of collection.
35. In addition to what is stated in the prior Paragraph, if Respondents fail to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- (a) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - (c) suspend or revoke Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

36. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

37. Effective upon signature of this CAFO by the Respondents, the Respondents agree that the time period commencing on the date of its signature and ending on the Effective Date shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA related to the matters addressed in this CAFO and that, in any action brought by EPA related to the matters addressed, the Respondents 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.

VIII. EFFECT OF CAFO

38. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this CAFO shall only resolve Respondents' liability for federal civil penalties for the violations and facts specifically alleged above.

39. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
40. Nothing in this CAFO shall relieve Respondents of their duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
41. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondents or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
42. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Administrator.
43. The provisions of this CAFO shall apply to and be binding upon Respondents and their officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
44. Any change in the legal status of the Respondents, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondents' obligations and responsibilities under this CAFO.
45. By signing this Consent Agreement, Respondents acknowledge that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
46. By signing this Consent Agreement, the Complainant, and the undersigned representative of the Respondents each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
47. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
48. By signing this Consent Agreement, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
49. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by the Respondents was materially false or inaccurate at the time such information was provided to EPA. If such false or

inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondents notice of its intent to revoke, which shall not be effective until received by Respondents in writing.

50. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

51. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

52. This CAFO shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of [LKQ Corporation, et al., Docket No. CWA-04-2022-0306(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

_____ for

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

LKQ Corporation, and
LKQ Southeast, INC.,

Respondents.

Docket No. CWA-04-2022-0306(b)

FINAL ORDER

The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondents. 40 C.F.R. §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondents are hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Daniel Blackman
Regional Administrator

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of LKQ Corporation, et al., Docket No. CWA-04-2022-0306(b), were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondents: David L. Rieser
 K&L Gates, LLP
 David.rieser@klgates.com
 70 West Madison Street
 Chicago, IL 60602
 312-807-4359

To EPA: Ahmad Dromgoole, Environmental Engineer
 Dromgoole.ahmad@epa.gov
 404-562-9212

Jay Khuti, Associate Regional Counsel
khuti.jay@epa.gov
404-562-8390

U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Shannon L. Richardson, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960