

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PORT OF PORT ANGELES,

Port Angeles, Washington

Respondent.

DOCKET NO. CWA-10-2022-0010

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,584 per day for each day during which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg. 83818 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues,

and the Port of Port Angeles (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, chemical wastes, biological materials, rock, sand, and industrial wastes.

3.5. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

3.6. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit...from which pollutants are or may be discharged.”

3.7. CWA Section 502(7), 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). At the time of the violations, “waters of the United States” included, *inter alia*, all waters that are currently used, were used in the past, or that may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. 40 C.F.R. § 122.2.

3.8. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits that authorize the discharge of any pollutant to navigable waters, but only in compliance with CWA Section 301, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA.

3.9. CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), requires an NPDES permit for stormwater discharges “associated with industrial activity.”

3.10. CWA Section 402(b), 33 U.S.C. § 1342(b), authorizes EPA to delegate NPDES permitting authority to authorized states. The State of Washington, through its Department of Ecology (Ecology), is an authorized NPDES permitting authority.

3.11. Pursuant to CWA Sections 308 and 402, 33 U.S.C. §§ 1318 and 1342, EPA promulgated regulations relating to the control of storm water discharges at 40 C.F.R. § 122.26.

Pursuant to 40 C.F.R. § 123.25, any state-authorized permitting authority must include such requirements in its NPDES permitting program.

3.12. Pursuant to 40 C.F.R. § 122.28, EPA may issue individual permits for a facility or general permits covering one or more categories of storm water discharges. Pursuant to 40 C.F.R. § 123.25, any authorized state permitting program may include provisions for general permits.

3.13. As an authorized state, the State of Washington issued the 2015 Industrial Stormwater General Permit (2015 ISGP) on December 3, 2014. The 2015 ISGP became effective January 2, 2015 and expired on December 31, 2019. Ecology subsequently issued the 2020 Industrial Stormwater General Permit (2020 ISGP) on November 20, 2019. The 2020 ISGP became effective January 1, 2020 and expires on December 31, 2024.

3.14. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), if a state NPDES program is approved pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Administrator of EPA retains the authority to take enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

3.15. CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes the EPA to assess administrative penalties against any person who violates CWA Section 301, 33 U.S.C. § 1311, or any condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

General Allegations

3.16. Respondent is a public special purpose port district organized under the laws of the State of Washington and is therefore a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.17. At all times relevant to this action, Respondent owned and/or operated the Port of Port Angeles (Port). The Port, which is available to ships coming into the Strait of Juan de Fuca,

en route to the Puget Sound, includes a 30-acre log yard located at 1301 Marine Drive, Port Angeles, WA 98362 (Facility).

3.18. Respondent discharges stormwater associated with industrial activity from the Facility into Port Angeles Harbor from multiple outfalls, including outfalls LY7 and CB2. Each outfall is a “point source” as defined in CWA Section 502(14), 33 U.S.C. § 1362(14).

3.19. Port Angeles Harbor is a part of the Puget Sound. The Puget Sound is an Inlet of the Pacific Ocean. Port Angeles Harbor and Puget Sound are subject to the ebb and flow of the tide and are currently used in interstate or foreign commerce. Accordingly, both waterbodies are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.20. At all times relevant to this action, Respondent was authorized to discharge stormwater containing pollutants associated with industrial activity, as well as certain allowable non-stormwater discharges, from the Facility into waters of the United States in accordance with the requirements and conditions, including sector specific conditions, contained in the 2015 and 2020 ISGPs under Permit No. WAR000314 (Permit).

3.21. On February 13, 2020, an authorized EPA inspector conducted an inspection of the Facility to determine compliance with the Permit and the CWA.

3.22. As part of the inspection, EPA reviewed records related to Respondent’s compliance with the 2015 and 2020 ISGPs and the CWA, including Respondent’s Stormwater Pollution Prevention Plan (SWPPP), dated January 28, 2020; monthly inspection reports; discharge monitoring reports and analytic records; and annual reports.

Violations

3.23. Based on the inspection and EPA’s review of relevant records, EPA alleges that between at least January 2017 through February 2020 Respondent violated certain terms and conditions of the 2015 and 2020 ISGPs and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Violation 1 – Failure to Identify Discharge Locations in SWPPP and Sampling Plan

3.24. Condition S3.A of the 2020 ISGP provides that all permittees and applicants for coverage under the ISGP shall implement a SWPPP. Condition S3.B of the 2020 ISGP provides that the SWPPP shall contain, *inter alia*, a site map and a sampling plan. Condition S3.B.1 of the 2020 ISGP provides that the site map shall identify the locations of all stormwater conveyances including ditches, pipes, and catch basins and the locations of stormwater inlets and outfalls with a unique identification number for each sampling point and discharge point, indicating any that are identified as substantially identical. Condition S3.B.5.a of the 2020 ISGP provides that the SWPPP sampling plan shall identify points of discharge to surface water, storm sewers, or discrete ground water infiltration locations.

3.25. Based on a review of Respondent's SWPPP, Respondent failed to identify outfalls LY7 and CB2 on its SWPPP site map, in violation of Condition S3.B.1 of the 2020 ISGP. Respondent also failed to identify outfalls LY7 and CB2 as points of discharge in the SWPPP sampling plan, in violation of Condition S3.B.5.a of the 2020 ISGP.

Violation 2 – Failure to Monitor All Discharge Locations

3.26. Condition S4.B.2.a. of the 2015 and 2020 ISGPs provides that the permittee shall designate sampling location(s) at the point(s) where it discharges stormwater associated with industrial activity off-site. Condition S4.B.1.a. of the 2015 and 2020 ISGPs provides that the permittee shall sample the discharge from each designated location at least once per quarter. Condition S4.B.2.c of the 2015 ISGP and S4.B.3.a. of the 2020 ISGP provide that the permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a substantially identical discharge point per S3.B.5.b of each respective permit. Condition S4.B.3 of the 2015 ISGP and Condition S3.B.4 of the 2020 ISGP provide that the permittee shall record and retain on-site certain required information for each stormwater sample taken.

3.27. Based on a review of Respondent's records, Respondent did not identify either outfall LY7 or outfall CB2 as exempt from monitoring as a substantially identical discharge point per S3.B.5.b of the 2015 and 2020 ISGPs and failed to monitor both outfalls for at least the period between October 2018 and February 2020, in violation of Condition S4.B.1.a of the 2015 and 2020 ISGPs.

Violation 3 – Failure to Adequately Store Hazardous Substances

3.28. Condition S3.B.4.b.i.4)a of the 2020 ISGP provides that the permittee shall store all hazardous substances, petroleum/oil liquids, and other chemical solid or liquid materials that have potential to contaminate stormwater on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank value or 110% of the volume contained in the largest tank, whichever is greater, or use double-walled tanks.

3.29. At the time of inspection, the EPA inspector observed fluid-filled containers outside that were exposed to precipitation. A representative of the Facility identified the fluid inside the containers as oil and antifreeze. On at least February 13, 2020, containers filled with oil and antifreeze were exposed to precipitation and were not surrounded by any containment berm or dike, in violation of Condition S3.B.4.b.i.4)a of the 2020 ISGP.

Violation 4 – Failure to Adequately Sample

3.30. Condition S5.A.1. of the 2015 and 2020 ISGPs provides that permittees shall sample stormwater discharges as specified in Condition S4 and as specified in Table 2. Table 2 of Condition S5.A.1 of the 2015 and 2020 ISGPs provides monitoring requirements for, *inter alia*, turbidity and pH. Appendix 2 of the 2015 and 2020 ISGPs defines turbidity to mean the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a *calibrated* turbidimeter (emphasis added). Footnote c. of Table 2 of Condition S5.A.1 of the 2015 Permit ISGP provides that permittees shall use either a *calibrated* pH meter or narrow-

range pH indicator paper with a resolution not greater than ± 0.5 SU (emphasis added). Footnote c. of Table 2 of Condition S5.A.1 of the 2020 ISGP provides that permittees shall use either a *calibrated* pH meter or narrow-range pH indicator paper with a resolution of ± 0.5 SU or better (emphasis added).

3.31. At the time of the inspection, the EPA inspector observed that the calibration solutions for the turbidity meter and the pH meter had expired in January 2011 and October 2019, respectively. A representative of the Facility reported that the Facility measures the turbidity and pH of stormwater discharges onsite. Use of expired calibration solutions may affect the turbidity and pH meter readings and the accuracy of the Facility's reported discharge monitoring reports. By using expired calibration solutions, Respondent failed to adequately sample for turbidity and pH, in violation of Condition S5.A.1. of the 2015 and 2020 ISGPs.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$67,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
R10_RHC@epa.gov

Raymond Andrews
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Andrews.Raymond@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the

Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and 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 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional expenses incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.


4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12/14/21

FOR RESPONDENT:



GEOFF JAMES
Executive Director
Port of Port Angeles

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PORT OF PORT ANGELES

Port Angeles, Washington

Respondent.

DOCKET NO. CWA-10-2022-0010

FINAL ORDER

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2022.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Port of Port Angeles, Docket No.: CWA-10-2022-0010**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was emailed to:

Caitlin M. Soden, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Office of Regional Counsel
1200 Sixth Avenue, Suite 155, Mail Stop ORC-11-C07
Seattle, Washington 98101
(206) 553-6635
Soden.Caitlin@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was emailed to:

Carolyn A. Lake
Counsel for Respondent
Goodstein Law Group PLLC
501 South "G" Street
Tacoma, Washington 98405
(253) 229-6727
CLake@goodsteinlaw.com

DATED this _____ day of _____, 2022.

Regional Hearing Clerk
EPA Region 10