

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
<b>M. Gervich &amp; Sons, Inc.</b>	)	Docket No. CWA-07-2020-0159
	)	
Respondent	)	
	)	COMPLAINT AND
Proceedings under	)	CONSENT AGREEMENT/
Section 309(g) of the Clean Water Act,	)	FINAL ORDER
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 United States Environmental Protection Agency's (“EPA’s”) 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 (“Consolidated Rules of Practice”).

2. Complainant, the United States Environmental Protection Agency Region 7 (“EPA” or “Complainant”) and Respondent, M. Gervich & Sons, Inc. (hereafter, “M. Gervich & Sons” or “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 Respondent violated its National Pollutant Discharge Elimination System ("NPDES") permit for stormwater discharges associated with industrial activity, issued under the authority of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

**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 of EPA Region 7, who in turn has delegated the

authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent is and was at all times relevant a corporation under the laws of, and authorized to do business in, 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 an NPDES permit issued pursuant to that Section.

7. 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 conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. 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.

9. 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.

10. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classification 5093 involved in the “recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards.” See 40 C.F.R. § 122.26(b)(14)(vi).

11. 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.

12. The IDNR issued and implemented NPDES General Permit No. 1 (“GP #1” or “Permit”) for Storm Water Discharge Associated with Industrial Activity. The most recent 5-year permit has an effective date of October 1, 2017, and an expiration date of October 1, 2022, with previous 5-year permits having been issued in 2002, 2007, 2012. The relevant provisions of each permit, as reissued, are substantially the same.

13. Any individual seeking coverage under GP #1 is required to submit a Notice of Intent (“NOI”) to the IDNR in accordance with the requirements of Part II. of the permit. Respondent submitted NOIs to IDNR to obtain authorization under GP #1.

14. As required by Part III.C.1 of GP #1, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in the Permit, must be completed and maintained on site before the NOI is submitted to the IDNR, and executed concurrently with operations at the facility.

### **EPA’s General Allegations**

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

16. Respondent is, and was at all times relevant to this action, the owner and/or operator of a facility known as M. Gervich & Sons, Inc., located at 901 East Nevada Street, Marshalltown, IA 50158 (“Facility”), and the Facility operates under SIC 5093 and processes metals for recycling.

17. The Facility consists of two separate parcels of land. The main yard is at the facility address and is approximately nine acres in size (“main yard”). There is also a separate small one-acre parcel, directly to the north of the main parcel (“north yard”). The facility receives all different types of scrap metals from private and commercial sources, sorts the metals, and processes the metal into smaller pieces as needed and ships the metal off for recycling. The main yard is divided by a rail spur with an east portion and a west portion. The north yard is used for sorting of very large commercially generated scrap that needs to be cut into smaller pieces for shipping

18. Stormwater within the east portion of the main yard flows to a stormwater sewer inlet that discharges approximately 30 feet west of Linn Creek and flows over a walking/bike path to Linn Creek out of an engineered discharge structure (Outfall 001). Other portions of the site flow into a small basin that collects stormwater and sediment that is pumped to an area that drains to Outfall 001

19. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge via stormwater outfalls that flow to Linn Creek and on to the Iowa River.

20. The runoff and drainage from Respondent’s Facility are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

21. Stormwater from Respondent’s Facility contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and Section VIII of the Permit (Definitions), which state such discharges include stormwater discharges from facilities operating under SIC code 5093.

23. The Facility is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. Linn Creek, as identified in Paragraph 19, above, is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

25. Stormwater runoff from Respondent’s industrial activity 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).

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

27. The NOIs filed by Respondent to obtain permit authorization under GP #1 state that Linn Creek receives stormwater runoff from the Facility. Based on the NOIs filed by Respondent, the facility was authorized (IA-3833-3687) by the IDNR to discharge stormwater associated with industrial activity in accordance with the terms and conditions of GP #1. Initial authorization was issued to Respondent by IDNR on October 27, 1998 and was most recently renewed on October 1, 2017 and provides coverage through October 1, 2022. At all times relevant, the Respondent has operated under authorization of the Permit and the provisions of the Permit have remained substantially the same.

28. The Facility was inspected by IDNR on or about May 27, 2016. In the 2016 IDNR inspection report, the SWPPP was marked as non-compliant in the following areas:

- a. A deficient site map (that failed to identify the drainage area, stormwater outfalls, existing structural controls, surface water bodies);
- b. Plan had not been amended based on changes in design, construction, operation, (or maintenance or if SWPPP proved to be ineffective); and
- c. Failure to keep copy of signed annual reports onsite for at least 3 years (Recordkeeping and internal reporting procedures).

29. On or about February 19, 2020, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“EPA Inspection”) of Respondent’s Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with GP #1 and the CWA.

30. During the EPA Inspection, the EPA inspector reviewed Respondent’s records related to the GP #1, including Respondent’s SWPPP for the Facility (as revised after the IDNR

2016 inspection and dated June 2, 2016), and observed the Facility and the Facility's stormwater outfalls and stormwater controls.

31. During the inspection, EPA documented the following conditions relevant to Respondent's compliance with GP #1:

- a. There were two piles of scrap stored on top of and on the downstream side of the concrete curb on the southwest side of the main yard that would allow all stormwater that contacts these piles of scrap to run off site;
- b. There are no structural stormwater controls at the stormwater inlets;
- c. Respondent failed to document quarterly inspections, as required by the Facility's SWPPP;
- d. Respondent failed to document past annual inspections, or to maintain annual inspection reports;
- e. Respondent failed to maintain training records; and
- f. The SWPPP did not identify potential spill areas and did not describe procedures for cleaning up spills.

32. At the conclusion of the inspection, the EPA inspector issued the Respondent a Notice of Potential Violation ("NOPV") identifying issues determined to be potential violations of Respondent's authorization under GP #1, including but not limited to:

- a. The facility SWPPP was out of date and needs to be updated;
- b. The facility SWPPP maps required updating to include all structural controls, drainage flows, and outfalls;
- c. The SWPPP certification was not signed;
- d. The Facility did not maintain training or inspection records; and
- e. Facility had not completed the required annual site evaluation or prepared an annual report since 2017.

33. The EPA NOPV offered the Respondent an opportunity to reply and address any of the potential violations identified by the EPA inspector. Respondent provided a response to the EPA inspector by email dated February 21, 2020, that included a revised SWPPP, and identified planned actions by Respondent to address issues identified in the NOPV.

34. A copy of the Inspection report was emailed by the EPA to Respondent on April 1, 2020.

### **EPA's Specific Allegations**

#### **Count 1**

#### **Inadequate SWPPP/Failure to Amend SWPPP**

35. The allegations stated above are realleged and incorporated herein by reference.

36. Part III.C. of GP #1 requires that a SWPPP be developed for each facility covered by the Permit, that is prepared in accordance with good engineering practices; identifies potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility; and describes and ensures the implementation of practices which will be used to reduce pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. GP #1 sets forth specific requirements for a SWPPP, that include the following:

- a. Part III.C.4.A(1) requires the plan to include a site map showing an outline of the drainage area of each stormwater outfall; each existing structural control measure to reduce pollutants in stormwater runoff; and each surface water body;
- b. Part III.C.4.A(4) requires for each area that generates stormwater associated with industrial activity, a prediction of the direction of flow, and an estimate of the types of pollutants which are likely to be present in stormwater discharges;
- c. Part III.C.4.B. requires the plan to provide a description of stormwater management controls appropriate to the facility and implement such controls;
- d. Part III.C.4.B(5) requires that in areas where potential spills can occur, their accompanying drainage points shall be clearly identified and procedures for cleaning up spills shall be included in the SWPPP.

37. Part III.C.3. of GP #1 further requires that the SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential to discharge pollutants, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activities.

38. Part III.C.2.C. of GP #1 states that the Department may review the SWPPP at any time and notify the permittee that the plan does not meet one or more of the minimum requirements of this Part. After such notification, the permittee is required to make changes to the plan.

39. Respondent's SWPPP at the time of EPA's inspection was dated as revised in June 2016, but had not been updated to address the deficiencies previously documented by IDNR. Specific deficiencies of the Facility's SWPPP at the time of EPA's inspection included:

- a. The SWPPP's facility maps did not include outfalls, drainage patterns, locations of structural controls, or surface water bodies as required by Part III.C.4.A(1) and Part III.C.4.A(4) of the Permit;
- b. The SWPPP did not include a description of structural controls as required by Part III.C.4.B of the Permit; and
- c. The SWPPP did not describe potential spill areas or procedures for cleaning up spills as required by Part III.C.4.B(5) of the Permit.

40. The SWPPP emailed to EPA following the inspection continued to be deficient, including but not limited to the following:

- a. The SWPPP does not adequately describe structural controls;
- b. The SWPPP map does not identify all outfalls, the on-site stormwater sewer system, and the receiving stream; and
- c. The Spill Prevention and Response portion of the SWPPP is inadequate and does not describe potential spill areas with drainage and clean-up procedures.

41. As summarized above, the EPA finds that at the time of EPA's Inspection Respondent failed to have an adequate and accurate SWPPP, and/or to have updated or amended the Facility's SWPPP to describe current facility conditions, as required by Part III.C. of GP #1.

42. Respondent's failures to develop an adequate and accurate SWPPP and/or to update or amend the Facility's SWPPP to reflect current facility conditions are each violations of the terms and conditions of GP #1, and as such, are violations of the conditions and limitations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

## **Count 2**

### **Failure to Implement and/or Maintain Appropriate Controls**

43. The allegations stated above are re-alleged and incorporated herein by reference.

44. Part III.C of GP #1, requires the development and full implementation of the facility's SWPPP concurrent with beginning operations at the facility.

45. Part III.C.4.B of GP #1, requires the facility to develop and implement storm water management controls appropriate to the facility to address identified potential sources of pollutants at the facility, as further detailed in Part III.C.4.B.(1) through (10) of the Permit.

46. Part III.C.4.B.(3) of GP #1 requires that the SWPPP describe a preventive maintenance program that involves inspection and maintenance of storm water management devices as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

47. Section 4.0 of the Facility's SWPPP states that best management practices (BMPs) will be implemented to minimize the amount of pollutants in the stormwater discharge.

48. Section 4.4 of the Facility's SWPPP states that structural BMPs shall be inspected for signs of washout, breakage, deterioration, damage, or overflowing.

49. The EPA Inspector observed the Facility's stormwater management controls, including structural controls and BMPs and documented metal scrap piles overflowing the concrete curb in the south edge of the main yard and no controls at the Facility's on-site storm sewer inlet.

50. As summarized above, the EPA finds that Respondent failed to implement and/or maintain appropriate controls and BMPs, as required by Part III.C of GP #1 and/or the Facility's SWPPP.

51. Respondent's failure to implement adequate stormwater management controls is a violation of the conditions and limitations of GP #1, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3  
Failure to Conduct and/or Document Employee Training**

52. The allegations stated above are re-alleged and incorporated herein by reference.

53. GP #1, Part III.C.4.B(8) requires Respondent to provide employee training programs to inform personnel at all levels of responsibility of the components and goals of the SWPPP including but not limited to spill response, good housekeeping, and material management practices.

54. Part V.E of GP #1, Retention of Records, requires the Respondent to retain a copy of records, data, and reports required by the Permit for the duration of the Permit or at least three years from the date of the record.

55. Section 4.5 of the Facility's SWPPP states that training will be presented annually, and a record of training will be maintained with the SWPPP.

56. At the time of EPA's inspection, Respondent did not have any records of the required annual training.

57. As summarized above, the EPA finds that Respondent failed to perform training and/or maintain records of the required annual employee training, as required by Part III.C.4.B(8) and Part V.E of the GP #1.

58. Respondent's failure to conduct employee training for the stormwater prevention program and/or to maintain records of such training are violations of the conditions and limitations of GP #1, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4  
Failure to Conduct and/or Document Quarterly Inspections**

59. The allegations stated above are re-alleged and incorporated herein by reference.

60. Part III.C.4.B(3) of GP #1 requires that the SWPPP shall describe a preventative maintenance program that involves inspections and maintenance of stormwater management



devices as well as inspecting and testing equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

61. Part III.C.4(B)(9) of GP #1 requires that the facility document incidents such as spills, or other discharges, along with other information describing the quality and quantity of stormwater discharges shall be included in the inspection records. Inspection and maintenance activities shall be documented and recorded.

62. Section 4.4 of the Facility's SWPPP states that inspections will occur on a quarterly basis, shall include all designated areas of the facility and equipment identified in the plan, and that the inspection will be documented upon completion.

63. Part V.E. of GP #1, Retention of Records, requires the Respondent to retain a copy of records, data, and reports required by the Permit for the duration of the Permit or at least three years from the date of the Record.

64. At the time of EPA's inspection, Respondent did not have quarterly inspection or maintenance records from February 2017 through February 2020.

65. As summarized above, the EPA finds that Respondent failed to conduct and/or document quarterly inspections and maintain records as required by Parts III.CV.E of GP #1, and/or the Facility's SWPPP.

66. Respondent's failure to conduct and/or document inspections and maintain records are violations of the conditions and limitations of GP #1, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 5  
Failure to Conduct and/or Document Annual Inspections**

67. The allegations stated above are re-alleged and incorporated herein by reference.

68. GP #1, Part III.C.4.C of GP #1 requires qualified personnel to inspect designated equipment and plant areas at appropriate intervals specified in the plan but in no case less than once per year.

69. Part III.C.4.C(3) of GP #1 requires that a report summarizing the scope of the inspection, personnel making the inspection, date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken shall be made and retained as part of the SWPPP for at least three years.

70. At the time of the EPA inspection, the Respondent had no annual inspection reports for 2017 to 2019 and stated that no inspections had been conducted as required by GP #1.

71. As summarized above, the EPA finds that Respondent failed to annually inspect and/or document or maintain records of annual inspections of the Facility from 2017 to 2019, as required by Part III.C.4.C of GP #1.

72. Respondent's failure to conduct and/or document annual inspections and/or to maintain records of such inspections are violations of the conditions and limitations of GP #1, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **CONSENT AGREEMENT**

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

74. 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 the Consent Agreement/Final Order.

75. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

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

77. Respondent and Complainant each agree to resolve 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.

78. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

79. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

80. 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.

81. Respondent certifies by signing this Consent Agreement/Final Order that it has also signed a companion administrative Order for Compliance to address the violations cited above (Docket No. CWA-07-2020-0158), that it has already taken actions to address the

violations cited above, and to the best of its knowledge, it is presently in compliance at the Facility with the Order and is taking the actions necessary to achieve compliance with the requirements of NPDES Permit IA-3833-3687 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its applicable regulations.

82. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

### **Penalty Payment**

83. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of Eight Thousand, Three Hundred and Fourteen Dollars (\$8,314) pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

84. Respondent shall pay the penalty identified in Paragraph 83 by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2020-0159 to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to EPA Region 7, Regional Hearing Clerk, at [R7\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R7_Hearing_Clerk_Filings@epa.gov) and Howard Bunch, EPA Region 7, Attorney, at [bunch.howard@epa.gov](mailto:bunch.howard@epa.gov).

85. 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.

86. 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**

87. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged 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.

88. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 81 of this Consent Agreement/Final Order.

89. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

90. 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 collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

91. 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**

92. 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.

93. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 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.

94. 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).

95. 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.

96. 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:

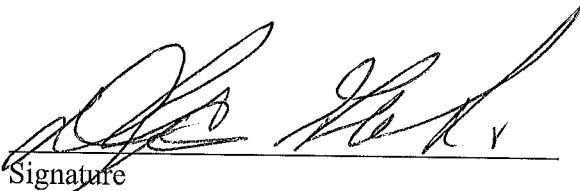
\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Howard Bunch  
Office of Regional Counsel

**For the Respondent, M. Gervich & Sons, Inc.:**

11/2/21  
Date

  
Signature

Douglas Gervich  
Name

PRS  
Title

Jimmy@gervich.com  
Email Address

**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

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by email to Respondent:

M. Gervich & Sons, Inc.  
Attention: Jimmy Perez (Operations Manager)  
901 East Nevada Street  
Marshalltown, Iowa 50158  
*Jimmy@gervich.com*

Copy by email to Attorney for Complainant:

Howard Bunch  
U.S. Environmental Protection Agency Region 7  
*bunch.howard@epa.gov*

Copy by email to the Iowa Department of Natural Resources:

Ted Petersen  
IDNR Environmental Program Supervisor  
*ted.petersen@dnr.iowa.gov*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hearing Clerk, Region 7