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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

WASTE MANAGEMENT OF
WASHINGTON, INC.,
Seattle, Washington

Respondent.

DOCKET NO. CWA-10-2016-0038

**CONSENT AGREEMENT AND
FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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

Management of Washington, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

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

2.3. Part III of this CAFO 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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. Section 502(12) of the CWA, 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.” Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes and industrial waste.

3.4. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources and establish a comprehensive program to regulate these additional sources.

3.6. The regulation at 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity” to include discharges associated with “refuse sites” and “immediate access roads . . . used or traveled by carriers of . . . waste material.” The regulation at 40 C.F.R. § 122.26(b)(14)(viii) further specifies that discharges associated with activities conducted at sites that operate under Standard Industrial Classification (“SIC”) 42 constitute stormwater discharges associated with industrial activity.

3.7. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.8. In October 2009, Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2010 Stormwater GP became effective on January 1, 2010 and expired on January 1, 2015. The 2010 Stormwater GP authorized certain discharges of stormwater associated with industrial activity at permitted facilities. Ecology modified the 2010 Stormwater GP effective July 1, 2012. Facilities covered under the 2010 Stormwater GP were automatically covered under the July 1, 2012, modified permit.

3.9. The 2010 Stormwater GP requires facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable Stormwater GP.

3.10. Respondent is a corporation duly organized under the laws of the State of Delaware and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.11. At all times relevant to this CAFO, Respondent was the owner and/or operator of the Eastmont Transfer Station and Materials Recovery Facility located at 7201 West Marginal Way SW, Seattle, Washington (“Facility”). The Facility is a solid waste transfer station that collects and transfers refuse and recyclables from several communities in King County, Washington. The Facility operates under SIC Code 4212.

3.12. Stormwater runoff at the Facility is collected, in pertinent part, into five onsite catch basins, which are assigned the identifiers: CB-1, CB-2, CB-3, CB-4, and CB-5.

3.13. Prior to July 2012, catch basins CB-1 through CB-3 discharged stormwater into a stormwater detention pond located adjacent to the north end of the property (“Detention Pond”)

via a 48 inch diameter pipe (“Outfall A”). In July 2012, Respondent plugged the stormwater line from CB-1, CB-2, and CB-3 and captured the stormwater in a 20,000 gallon holding tank (“Tank 1”), such that no stormwater from CB-1, CB-2, or CB-3 discharged through Outfall A. After July 2012, Respondent either discharged the stormwater collected in Tank 1 to the King County Sewer after operational re-use or discharged the stormwater into the Detention Pond via sheet flow to CB-5 and a connected eight-inch diameter line (“Outfall 001”). At all times relevant to this CAFO, CB-5 discharged stormwater into the Detention Pond via Outfall 001. At all times relevant to this CAFO, CB-4 discharged stormwater into the Detention Pond via Outfall A.

3.14. At all times relevant to this CAFO, the stormwater collected in and discharged from CB-1, CB-2, and CB-3 was associated with industrial activity occurring at the Facility.

3.15. On at least April 5, 2013, the stormwater collected in and discharged from CB-4 was associated with industrial activity occurring at the Facility.

3.16. At all times relevant to this CAFO, the stormwater collected in and discharged from CB-1 through CB-5 into the Detention Pond contained “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.17. In addition to the stormwater discharged from CB-1 through CB-4, Outfall A conveys stormwater into the Detention Pond from other facilities located adjacent to and up gradient of the Facility.

3.18. Stormwater collected in the Detention Pond discharges through an underground storm drain into the Lower Duwamish River.

3.19. At all times relevant to this CAFO, the Facility was a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contained point sources.

3.20. The Duwamish River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Duwamish River is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.21. At all times relevant to this CAFO, the Facility had coverage under the 2010 Stormwater GP (permit no. WAR000581).

Count 1: Failure to Conduct Quarterly Benchmark Monitoring

3.22. Condition S4.A of the 2010 Stormwater GP states, “[t]he Permittee shall conduct sampling of stormwater in accordance with this permit and the [Stormwater Pollution Prevention Plan].”

3.23. Condition S4.B.2.c of the 2010 Stormwater GP states, “[t]he Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a substantially identical outfall per S3.B.5.b. . . .”

3.24. Condition S4.B.1.a of the 2010 Stormwater GP states, “[t]he Permittee shall sample the discharge from each designated location at least once per quarter”

3.25. Stormwater was discharged from the facility at least once per each calendar quarter from January 1, 2011, through June 30, 2012.

3.26. Prior to July of 2012, Respondent believed that stormwater collected in CB-1, CB-2, and CB-3 discharged to the Detention Pond through an eight-inch diameter line at Outfall 001 and not through Outfall A.

3.27. As a result of this belief, Respondent failed to sample stormwater from CB-1, CB-2, and CB-3 that was discharged from the Facility off-site from January 1, 2011, through June 30, 2012, amounting to six sampling quarters.

3.28. Therefore, Respondent violated Conditions S4.a, S4.B.2.c, and S4.B.1.a of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), six times from January 1, 2011, through June 30, 2012.

**Count 2: Failure to Collect Representative Sample
(CB-4)**

3.29. The allegations contained in Paragraphs 3.1 through 3.28 are incorporated by reference and restated herein.

3.30. Condition S4.B.1.d of the 2010 Stormwater GP states, “[t]he Permittee shall obtain representative samples”

3.31. Appendix 2 of the 2010 Stormwater GP defines “representative” to mean “a sample of the discharge that accurately characterizes stormwater runoff generated in the designated drainage area of the facility.”

3.32. Stormwater was discharged from the facility at least once during the time period from April 1, 2013, through June 30, 2013. During this time period, the stormwater collected in CB-4 was ultimately discharged through Outfall A. Because Outfall A collects stormwater from multiple sources up gradient to Respondent’s facility, samples from Outfall A would not accurately characterize the stormwater runoff collected in CB-4. Therefore, Respondent was required to obtain a sample from the stormwater collected in CB-4 between April 1, 2013, and June 30, 2013.

3.33. During the time period from April 1, 2013, through June 30, 2013, Respondent sampled the stormwater discharge from Outfall A, only.

3.34. Respondent failed to sample the stormwater discharge from CB-4 from April 1, 2013, through June 30, 2013, amounting to one sampling quarter.

3.35. Therefore, Respondent violated Conditions S4.A and S4.B.1.d of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), once from April 1, 2013, through June 30, 2013.

Count 3: Failure to Sample Stormwater Discharge

3.36. The allegations contained in Paragraphs 3.1 through 3.35 are incorporated by reference and restated herein.

3.37. Prior to October 17, 2014, Respondent connected CB-5 to a tank such that all stormwater discharged from CB-5 would be collected in the tank ("Tank 2").

3.38. Condition S4.B.1.b. of the 2010 Stormwater GP states, "Permittees shall sample the stormwater discharge from the first fall storm event each year. 'First fall storm event' means the first time after October 1st of each year that precipitation occurs and results in a stormwater discharge from a facility."

3.39. The first time after October 1, 2014, that precipitation occurred that resulted in a discharge from the Facility was October 17, 2014, when Tank 2 overflowed into the Detention Pond.

3.40. Respondent failed to sample the stormwater discharge on October 17, 2014.

3.41. Therefore, Respondent violated Conditions S4.A and S4.B.1.b. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), once on October 17, 2014.

Count 4: Incorrect Site Map in Stormwater Pollution Prevention Plan

3.42. The allegations contained in Paragraphs 3.1 through 3.41 are incorporated by reference and restated herein.

3.43. Condition S3.B of the 2010 Stormwater GP states, "The [Stormwater Pollution Prevention Plan] shall contain a site map."

3.44. Condition S3.B.1.c. of the 2010 Stormwater GP states, “The site map shall identify the stormwater drainage and discharge structures.”

3.45. In April of 2013, Respondent performed a dye test which showed that the stormwater lines were wrongly depicted in Respondent’s Stormwater Pollution Prevention Plan, which showed that drainage from CB-1 through CB-4 discharged into the Detention Pond through Outfall 001, rather than Outfall A. Therefore, the site map did not identify the correct stormwater drainage and discharge structures.

3.46. Therefore, Respondent violated Condition S3.B.1.c. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Enforcement Authority

3.47. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated any permit condition or limitation ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

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

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), 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. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$39,600.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

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, Missouri 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 described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO 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 Section 309(g)(9) of the CWA, 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 Section 309(g)(9) of the CWA, 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 costs 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 CAFO 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 CAFO, 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 costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO 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:
12/13/15

FOR RESPONDENT:


JASON ROSE, President
Waste Management of Washington, Inc.

DATED:
12/11/2015

FOR COMPLAINANT:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

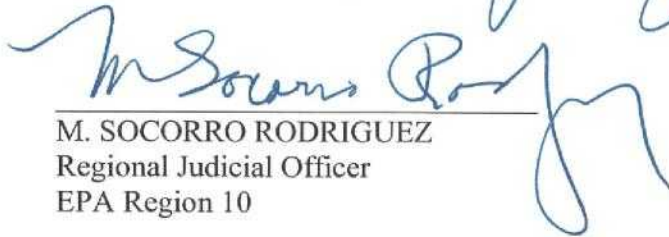
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO 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.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. 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(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 14th day of January, 2016.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Waste Management of Washington, Inc., DOCKET NO.: CWA-10-2016-0038** was 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 delivered to:

Brett S. Dugan
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Waste Management of Washington, Inc.
Attention: Andrew M. Kenefick, Senior Legal Counsel
720 Fourth Avenue, Suite 400
Kirkland, WA 98033

DATED this 14 day of January, 2016



Signature

Teresa Luna
Regional Hearing Clerk
EPA Region 10