

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103



In the Matter of: :
 :
BERG BROTHERS RECYCLING, INC. : U.S. EPA Docket No. CWA-03-2024-0001
1401 WEST HAMBURG STREET :
BALTIMORE, MD 21230 : Proceeding under Section 309(g) of the Clean
 : Water Act, 33 U.S.C. § 1319(g)
Respondent. :
 :
BERG BROTHERS RECYCLING, INC. :
1401 WEST HAMBURG STREET :
BALTIMORE, MD 21230 :
 :
Facility. :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Berg Brothers Recycling, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).
5. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and by email sent on February 6, 2023, EPA notified the Maryland Department of the Environment (“MDE”) of EPA’s intent to commence this administrative action against Respondent in response to the violations of the CWA that are alleged herein.

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
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(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
16. “Pollutant” is defined as “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(6).
17. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(12).
18. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
19. “Storm water discharge associated with industrial activity” means “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant” and “includes, but is not limited to, storm water discharges from...material handling sites; refuse sites; sites used for the application or disposal of process waste waters...; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products.” 40 C.F.R. § 122.26(b)(14).
20. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26(a)(1)(ii), require facilities discharging stormwater associated with industrial activity to obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.
21. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the State of Maryland, through the Maryland Department of the Environment (“MDE”), is authorized by EPA to administer the NPDES program in Maryland.

22. The State of Maryland, through MDE has incorporated the NPDES Permit program requirements of the CWA, 33 U.S.C. § 1342 in Title 9 of the Environment Article, Annotated Code of Maryland (“Maryland Stormwater Regulations”).
23. Pursuant to the authority of the CWA, MDE issued the General Permit for Stormwater Discharges Associated with Industrial Discharges (“General Permit”), Permit No. 12-SW in Maryland. This General Permit became effective on January 1, 2014, and expired December 31, 2018. MDE then administratively extended this General Permit. The General Permit is available at <https://mde.maryland.gov/programs/permits/WaterManagementPermits/Documents/GDP%20Stormwater/Modification%20A%20%282018%29/12SW-Permit-w-ModA.pdf>.
24. Subsequently, MDE issued the final renewal permit for the General Permit for Discharges from Stormwater Associated with Industrial Activities, effective February 1, 2023, known as “Maryland General Permit No. 20-SW”. Existing permittees are required to submit a Notice of Intent (NOI), fee, and Stormwater Pollution Prevention Plan (“SWPPP”) no later than July 31, 2023, to prevent a lapse in coverage.
25. The General Permit is issued for 5-year terms and requires facilities that discharge storm water to a surface water body of the state to comply with specific requirements governing storm water discharges associated with industrial activities.
26. The General Permit authorizes the discharge of stormwater associated with industrial activity in accordance with the provisions of the State’s General Permit.
27. A violation of the General Permit is also a violation of the CWA and may be subject to penalties established under that statute.
28. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation.
29. Respondent, Berg Brothers Recycling, Inc., is, and at all times relevant to this Consent Agreement and Final Order was, the owner and operator of a scrap metal recycling facility located at 1401 West Hamburg Street, Baltimore, MD 21230 (the “Facility”).
30. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, a corporation organized and existing under the laws of the State of Maryland, and a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is subject to the assessment of civil penalties for the violations alleged herein.
31. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, engaging in “industrial activity” at the Facility, within the meaning of 40 C.F.R. § 122.26(a)(1)(ii).

32. The Facility discharges, and at all times relevant to this Consent Agreement and Final Order discharged, stormwater and/or authorized non-stormwater through outfalls identified in its Permit into Gwynns Falls, a tributary to the Patapsco River which is a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
33. On March 11, 2015, Respondent filed a Notice of Intent (“NOI”) for coverage and MDE extended coverage to Berg Brothers under the National Pollution Discharge Elimination System (“NPDES”) Registration No. MDR001402 (“Permit”). Coverage commenced on 16, 2015, continued through December 31, 2018, and then was administratively extended by MDE.
34. Respondent submitted an NOI for Maryland General Permit No. 20-SW on May 23, 2023, and it is currently under review with MDE.
35. On November 16, 2021, an EPA compliance inspection team conducted an inspection of the Facility (“Inspection”), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.
36. EPA sent an Inspection report, dated December 17, 2021, to Respondent on January 11, 2022.
37. Because Berg Brothers could not provide complete records at the time of the Inspection, the EPA Inspection team sent follow-up information requests and reminders to Respondent on November 18, 2021, and February 2, 2022.
38. Based on the Inspection and review of Respondent’s responses to EPA’s information requests, EPA has identified the following violations of the Permit issued under Section 402 of the CWA, and Section 301 of the CWA, 33 U.S.C. § 1311 and 1342.

Count I

Failure to Implement and Document Corrective Actions

39. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
40. Part IV. of the Permit provides:

A. Conditions Requiring Review and Revision to Eliminate Problem

If any of the following conditions occur, you must review and revise the selection, design, installation, and implementation of your control measures to ensure that the condition is eliminated and will not be repeated in the future:

1. an unauthorized release or discharge (e.g., spill, leak, or discharge of non-stormwater not authorized by this or another NPDES permit) occurs at your facility;
2. a discharge violates a numeric effluent limit; . . .

B. Conditions Requiring Review to Determine if Modifications Are Necessary

If any of the following conditions occur, you must review the selection, design, installation, and implementation of your control measures to determine if modifications are necessary to meet the effluent limits in this permit:

1. construction or a change in design, operation, or maintenance at your facility significantly changes the nature of pollutants discharged in stormwater from your facility, or significantly increases the quantity of pollutants discharged; or
2. the average of 4 quarterly sampling results exceeds an applicable benchmark. If less than 4 benchmark samples have been taken, but the results are such that an exceedence of the 4 quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than 4 times the benchmark level) this is considered a benchmark exceedence, triggering this review.

* * *

D. Corrective Action Report

1. Within 24 hours of discovery of any condition listed in Parts IV.A and IV.B, you must document the following information:
 - a. identification of the condition triggering the need for corrective action review;
 - b. description of the problem identified; and
 - c. date the problem was identified.
2. Within 14 days of discovery of any condition listed in parts IV.A and IV.B, above, you must document the following information:
 - a. summary of corrective action taken or to be taken (or, for triggering events identified in Part IV.B where you determine that corrective action is not necessary, the basis for this determination);
 - b. notice of whether SWPPP modifications are required as a result of this discovery or corrective action;
 - c. date corrective action initiated; and
 - d. date corrective action completed or expected to be completed.

3. You must include this documentation with the annual report required in Part V.A.2.b.

41. Through its Inspection and investigation, EPA learned that there were a total of 29 benchmark exceedances that were calculated by averaging quarterly data from January 1, 2018 to January 1, 2023. The exceedances are shown in Table 1 – 7, below. Although benchmark exceedances do not constitute violations, failure to implement and document corrective actions to address the cause of each exceedance is a violation of the Permit. At the time of the Inspection and EPA’s Investigation, Berg Brothers had not provided any documentation of the causes of these exceedances, or implemented corrective actions to address them, in violation of Part IV. A., B.2. and D.1 and 2. of its Permit.

42. Tables 1 – 7 show Benchmark Exceedances from January 1, 2018 to January 1, 2023.

Table 1. Outfall 1 2018 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2018) (mg/L)	Q2 (6/30/2018) (mg/L)	Q3 (09/30/2018) (mg/L)	Q4 (12/31/2018) (mg/L)	Average (mg/L)
Fe	1.0	1	NO DATA	0.911	NO DATA	3.33	2.1205
Cu	0.014	1	NO DATA	0.01	NO DATA	0.065	0.0375
Zn	0.12	1	NO DATA	0.066	NO DATA	0.279	0.1725

Table 2. Outfall 1 2019 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2019) (mg/L)	Q2 (6/30/2019) (mg/L)	Q3 (09/30/2019) (mg/L)	Q4 (12/31/2019) (mg/L)	Average (mg/L)
Fe	1.0	1	3.35	0.26	NO DATA	0.292	1.3007
Cu	0.014	1	0.071	0.013	NO DATA	0.053	0.0457
Zn	0.12	1	0.51	0.174	NO DATA	0.093	0.259

Table 3. Outfall 1 2020 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2020) (mg/L)	Q2 (6/30/2020) (mg/L)	Q3 (09/30/2020) (mg/L)	Q4 (12/31/2020) (mg/L)	Average (mg/L)
Fe	1.0	1	4.06	NO DATA	0.940	0.534	1.8447
Cu	0.014	1	0.072	NO DATA	0.023	0.042	0.0457
Pb	0.082	1	0.174	NO DATA	0.05	0.05	0.09133
Zn	0.12	1	0.629	NO DATA	0.107	0.12	0.2853

Table 4. Outfall 1 2021 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2021) (mg/L)	Q2 (6/30/2021) (mg/L)	Q3 (09/30/2021) (mg/L)	Q4 (12/31/2021) (mg/L)	Average (mg/L)
Fe	1.0	1	2.66	1.525	0.3359	0.2581	1.1948
Cu	0.014	1	0.1102	0.0511	0.0459	0.0209	0.05703
Pb	0.082	1	0.3381	0.1391	0.0256	0.0226	0.1314
Zn	0.12	1	0.905	0.4767	0.0874	0.0968	0.3915

Table 5. Outfall 2 2021 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2021) (mg/L)	Q2 (6/30/2021) (mg/L)	Q3 (09/30/2021) (mg/L)	Q4 (12/31/2021) (mg/L)	Average (mg/L)
TSS	100	2	210	210	339	106	168.50
Fe	1.0	2	0.5715	3.039	1.829	0.6657	1.5263
Cu	0.014	2	0.1386	0.2035	0.0525	0.0479	0.1106
Pb	0.082	2	0.0333	0.2656	0.0633	0.0253	0.09688
Zn	0.12	2	0.2978	1.003	0.225	0.1842	0.4275
COD	120	2	350	240	760	211	390.25

Table 6. Outfall 1 2022 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2022) (mg/L)	Q2 (6/30/2022) (mg/L)	Q3 (09/30/2022) (mg/L)	Q4 (12/31/2022) (mg/L)	Average (mg/L)
Cu	0.014	1	0.0139	0.2049	NO DATA	0.0595	0.0928
Fe	1.0	1	0.0923	1.233	NO DATA	2.071	1.1321
Zn	0.12	1	0.1178	0.2645	NO DATA	0.5273	0.3032

Table 7. Outfall 2 2022 Benchmark Exceedances

Parameter	Benchmark (mg/L)	Outfall	Q1 (3/31/2022) (mg/L)	Q2 (6/30/2022) (mg/L)	Q3 (09/30/2022) (mg/L)	Q4 (12/31/2022) (mg/L)	Average (mg/L)
Al	0.75	2	NO DATA	1.57	NO DATA	NO DATA	1.57
COD	120	2	NO DATA	322	NO DATA	NO DATA	322
Cu	0.014	2	NO DATA	0.1952	NO DATA	NO DATA	0.1952
Fe	1.0	2	NO DATA	3.521	NO DATA	NO DATA	3.521

Pb	0.082	2	NO DATA	0.1758	NO DATA	NO DATA	0.1758
Zn	0.12	2	NO DATA	0.645	NO DATA	NO DATA	0.645

- 43. Respondent violated Section 301 of the CWA, 33 U.S.C. §1311, from 2018 to February 2021 by failing to implement and document corrective actions to address the cause of each benchmark exceedance, as required by Part IV. A., B.2. and D.1 and 2. of its Permit, which was issued under Section 402 of the CWA, 33 U.S.C. § 1342.
- 44. In failing to comply with Part IV. A., B.2. and D.1 and 2. of its Permit and Sections 301 of the CWA, 33 U.S.C. § 1311, Respondent is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count II
Failure to Implement Appropriate Control Measures

- 45. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 46. Appendix D, Sector N in the Permit pertains to Scrap Recycling and Waste Recycling Facilities. Appendix D, Sector N, Sections N.3.1.2, N.3.1.4, and N.3.1.5 of the Permit provide:

N.3.1.2 Scrap and Waste Material Stockpiles and Storage (Outdoor). Minimize contact of stormwater runoff with stockpiled materials, processed materials, and nonrecyclable wastes. Following are some control measure options: (a) permanent or semi-permanent covers; (b) sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants; (c) dikes, berms, containment trenches, culverts, and surface grading to divert runoff from storage areas; (d) silt fencing/biologs; and (e) oil and water separators, sumps, and dry absorbents for areas where potential sources of residual fluids are stockpiled (e.g., automobile engine storage areas).

N.3.1.4 Scrap and Waste Material Stockpiles and Storage (Covered or Indoor Storage). Minimize contact of residual liquids and particulate matter from materials stored indoors or under cover with surface runoff. Following are some control measure options: (a) good housekeeping measures, including the use of dry absorbents or wet vacuuming to contain, dispose of, or recycle residual liquids originating from recyclable containers, or mercury spill kits for spills from storage of mercury switches; (b) not allowing washwater from tipping floors or other processing areas to discharge to the storm sewer

system; and (c) disconnecting or sealing off all floor drains connected to the storm sewer system.

N.3.1.5 Scrap and Recyclable Waste Processing Areas. Minimize surface runoff from coming in contact with scrap processing equipment. Pay attention to operations that generate visible amounts of particulate residue (e.g., shredding) to minimize the contact of accumulated particulate matter and residual fluids with runoff (i.e., through good housekeeping, preventive maintenance, etc.). Following are some control measure options: (a) regularly inspect equipment for spills or leaks and malfunctioning, worn, or corroded parts or equipment; (b) establish a preventive maintenance program for processing equipment; (c) use dry-absorbents or other cleanup practices to collect and dispose of or recycle spilled or leaking fluids or use mercury spill kits for spills from storage of mercury switches; (d) on unattended hydraulic reservoirs over 150 gallons in capacity, install protection devices such as low-level alarms or equivalent devices, or secondary containment that can hold the entire volume of the reservoir; (e) containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of stormwater runoff with outdoor processing equipment or stored materials; (f) oil and water separators or sumps; (g) permanent or semi-permanent covers in processing areas where there are residual fluids and grease; (h) retention or detention ponds or basins; sediment traps, and vegetated swales or strips (for pollutant settling and filtration); (i) catch basin filters or sand filters.

47. At the time of the Inspection, Respondent's Facility lacked Best Management Practices ("BMP") controls in multiple areas:
 - a. The West Hamburg Street gate contained dark staining nearby, and runoff appeared to be able to flow off site at this location. A Facility representative stated that the majority of water flows to the retaining wall at Wicomico Street; however, at the time of the Inspection, there were inadequate controls present near the gate within the stormwater retention wall.
 - b. There were no controls observed near the uncovered scrap metal piles that discharge to Outfall No. 001
48. At the time of the Inspection, Respondent failed to properly install and maintain BMPs to minimize contact of stormwater runoff with stockpiled materials, and to minimize surface runoff from coming in contact with scrap processing equipment.

49. At the time of the Inspection, Respondent violated Section 301 of the CWA, 33 U.S.C. §1311, by failing to properly install and maintain BMPs to minimize contact of stormwater runoff with stockpiled materials, and to minimize surface runoff from coming in contact with scrap processing equipment, as required by Appendix D, Sector N, Sections N.3.1.2, N.3.1.4, and N.3.1.5 of the Permit, which was issued pursuant to 402 of the CWA, 33 U.S.C. § 1342.
50. In failing to comply with Appendix D, Sector N, Sections N.3.1.2, N.3.1.4, and N.3.1.5 of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311, Respondent is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count III
Failure to Maintain Good Housekeeping

51. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

52. Part III.B.1.b.ii of the Permit (pertaining to “Control Measures and Effluent Limits”) provides:

ii.) *Good Housekeeping.* You must keep clean all exposed areas that are potential sources of pollutants, using such measures as sweeping at regular intervals, keeping materials orderly and labeled, and storing materials in appropriate containers. A good practice for ensuring housekeeping activities are performed at regular intervals would be keeping a schedule for routine grounds maintenance and cleanup.

53. Part VI.M of the Permit provides:

M. Facility Operation and Maintenance

You must at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or a similar system that you have installed only when the operation is necessary to achieve compliance with the conditions of the permit.

54. Part III.B.1.xi. of the Permit provides:

xi.) *Waste, Garbage and Floatable Debris.* You must ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by

intercepting them before they are discharged. The Department recommends practices including placing garbage or recycling containers at traffic areas, and identifying a schedule for personnel to walk site for trash and litter daily/weekly/ monthly, etc.

55. At the time of the Inspection, Outlet No. 001 was full of trash, and Facility representatives stated that it had not been maintained or cleaned out. Dark staining was observed on the ground, in various areas at the Facility, including the main storage building area and outside of the liquid storage building.
56. At the time of the Inspection, Respondent failed to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff. Respondent failed to implement procedures for material storage and BMPs, (such as socks or barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas).
57. At the time of the Inspection, Respondent violated Section 301 the CWA, 33 U.S.C. § 1311, by failing to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff, as required by Part VI.M, Part III.B.1.b.ii and Part III. B.1.xi. of the Permit, which was issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
58. In failing to comply with Part VI.M, Part III.B.1.b.ii and Part III. B.1.xi. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311, Respondent is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count IV
Failure to Provide Required Employee Training

59. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
60. Part III.B.ix of the Permit provides:

ix.) Employee Training. You must train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit...
61. Part III.C.5.a.iv of the Permit provides:

iv.) Employee Training. . . . The SWPPP must identify how often training will take place. All training must be held at least once per calendar year (or more often if employee turnover is high).
62. Appendix D, Sector N, Section N.3.1.1(d) of the Permit provides:

(d) provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials, including: education on draining and proper disposal of residual fluids (e.g., from vehicles and equipment engines, radiators and transmissions, oil filled transformers, and individual containers or drums) and removal of mercury switches from vehicles when not completed by suppliers.

63. Respondent's Stormwater Pollution Prevention Plan, dated December 9, 2021, Section 3.9, provides:

Grapewell Stormwater Consulting will provide annual training for all employees engaged with the industrial activities at Berg Bros. Recycling, Inc. The training will include general information about stormwater and stormwater runoff, a history of the stormwater permit, best management practices for stormwater discharges as related to the facility's operations, and spill prevention and response procedures. When the BMPs, control measures, and/or maintenance plans described in this SWPPP are changed or updated, employees will be notified and trained on the updated compliance measures.

64. Documentation reviewed during the Inspection and provided by Respondent subsequently indicates that annual employee training had only been completed during calendar year 2021. There was no documentation of training completed in the years 2019 and 2020. Therefore, Berg Brothers appears to have violated the annual employee training requirements of the Permit and in Section 3.9 of the SWPPP.
65. During the years 2019 and 2020, Respondent violated Section 301 of the CWA by failing to provide and document training on stormwater management, and recycling and materials handling, as required by Part III.B.ix, Part III.C.5.a.iv, and Appendix D, Sector N, Section N.3.1.1(d) of the Permit, which was issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.
66. In failing to comply with Part III.B.ix, Part III.C.5.a.iv, and Appendix D, Sector N, Section N.3.1.1(d) of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311, Respondent is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

CIVIL PENALTY

67. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of TWENTY-TWO THOUSAND dollars (\$22,000.00), which Respondent shall be liable to pay in accordance with the terms set forth below.

68. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including, the following: the nature, circumstances, extent and gravity of the violation(s), and the violator’s ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
69. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier’s check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent’s name and address, and the Docket Number of this action, *i.e.*, *CWA-03-2024-0001*;
 - b. All checks shall be made payable to the “United States Treasury”;
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously **by email** to:

Natalie Katz
Sr. Assistant Regional Counsel
katz.natalie@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk

R3_Hearing_Clerk@epa.gov.

70. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
71. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
72. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
73. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
74. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
75. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

76. The Parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: katz.natalie@epa.gov (for Complainant), and thomas.prevas@saul.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

77. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
78. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about Respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

79. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

80. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, 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 the validity of any federal, state, or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

81. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

EXECUTION / PARTIES BOUND

82. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

83. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

84. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In the Matter of: Berg Brothers Recycling, Inc.

EPA Docket No. CWA-03-2024-0001

For Respondent: BERG BROTHERS RECYCLING, INC.

Date: 1/22/24

By: Adam W. Berg, President
Adam W. Berg
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Natalie Katz
Sr. Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

FILED

Jan 31, 2024
10:29 am

U.S. EPA REGION 3
HEARING CLERK

In the Matter of: :
: :
BERG BROTHERS RECYCLING, INC. : U.S. EPA Docket No. CWA-03-2024-0001
1401 WEST HAMBURG STREET : :
BALTIMORE, MD 21230, : Proceeding under Section 309(g) of the Clean
: Water Act, 33 U.S.C. § 1319(g)
Respondent. : :
: :
BERG BROTHERS RECYCLING, INC. : :
1401 WEST HAMBURG STREET : :
BALTIMORE, MD 21230, : :
: :
Facility. : :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Berg Brothers Recycling, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the statutory factors set forth in Section 309(g)(3) of the Clean Water Act, 22 U.S.C. § 1319(g)(3).

NOW, THEREFORE, PURSUANT TO Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-TWO THOUSAND DOLLARS (\$22,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final

Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The Effective Date of the attached Consent Agreement and this Final Order is thirty (30) days after the date on which this Final Order is signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

By:

_____ *[Digital Signature and Date]*

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA – Region III

