

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

IN THE MATTER OF:)
)
) Docket No. CWA-07-2017-0224
)
SHIRLEY M. WHITNEY)
d/b/a)
CAPITAL CITY AUTO RECYCLERS)
Lincoln, Nebraska)
)
) ADMINISTRATIVE ORDER
Respondent) FOR COMPLIANCE
) ON CONSENT
)
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order”) is issued by the U.S. Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA, Region 7 and further delegated to the Director of the Water, Wetlands and Pesticides Division.

2. The Respondent in this case is Shirley M. Whitney, doing business as Capital City Auto Recyclers (“Respondent”).

Statutory and Regulatory Framework

3. 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 a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. It is the Parties’ intent through entering into this Order to address alleged noncompliance by the Respondent in violation of its NPDES permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits, nor denies the specific factual allegations of the Findings of Violation in the Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. The CWA prohibits the "discharge" of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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 to 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)(xi) defines "stormwater discharge associated with industrial activity," in part, as discharges from facilities classified as Standard Industrial Classification ("SIC") code 5015 (Motor Vehicle Parts, Used).

11. The Nebraska Department of Environmental Quality ("NDEQ") is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. The NDEQ has issued General Permit #NER000000, #NER900000 and #NER910000, which is a multi-sector permit that authorizes stormwater discharges associated with industrial activity. The current 5-year permit for this General Permit #NER910000 has an effective date of July 18, 2016, and an expiration date of June 30, 2021.

Factual Allegations

13. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Capital City Auto Recyclers, located at 140 W. P Street, Lincoln, Nebraska 68 (“Facility”), operating under the SIC code 5015 (Motor Vehicle Parts, Used), which includes establishments primarily engaged in the distribution at wholesale or retail of used motor vehicle parts. This industry includes establishments primarily engaged in dismantling motor vehicles for the purpose of selling parts. Respondent is also operating under SIC Code 5093 (Scrap and Waste Materials) which includes establishments primarily engaged in dismantling motor vehicles for scrap metal.

14. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge into Salt Creek which is a tributary to the Platte River which in turn is a tributary to the Missouri River.

15. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13). Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. Salt Creek, the Platte River, and the Missouri River, as identified in Paragraph 14, above, are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. 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).

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

20. At all times relevant to this action, Respondent’s facility has been subject to the referenced General Permit. After receipt of a Notice of Intent (“NOI”) from Respondent, dated on or about January 12, 2012, the NDEQ re-issued authorization under the General Permit (Permit No. #NER900423) to Respondent on April 19, 2012 (“Permit” or “Respondent’s Permit”). Permit #NER900423 expired on June 30, 2016. Respondent submitted a NOI on November 7, 2016, and NDEQ re-issued Permit #NER910312 to Respondent on January 18, 2016.

21. Respondent has operated under the Permit at all times relevant to this Order. At all relevant times related to these proceedings, the provisions of the Permit applicable to Respondent have remained substantially the same.

22. On or about October 25, 2016, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“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 its Permit and the CWA.

23. During the Inspection, the EPA inspector reviewed Respondent’s records related to the Permit and observed the facility and the receiving stream to which stormwater is discharged.

24. At the conclusion of the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation (“NOPV”) identifying potential violations of Respondent’s Permit.

25. On or about December 9, 2016, Respondent provided a response addressing the potential violations noted in the EPA inspector’s NOPV.

Allegations of Violations

Inadequate Stormwater Pollution Prevention Plan

26. Section 5.1.2 of General Permit No. NER910000 provides the minimum contents that must be included in the Site Description portion of the Stormwater Pollution Prevention Plan (“SWPPP”), which includes, but is not limited to: the location of all stormwater inlets and outfalls with a unique identification code for each outfall (e.g. SW-Outfall No. 1, No. 2, etc.); and the locations of all waste treatment, storage or disposal areas.

27. Based on observations and information collected during the EPA Inspection, Respondent’s SWPPP failed to provide the following information or the SWPPP provided information inconsistent with the Permit requirements:

- a. Respondent’s SWPPP failed to properly identify location of the tank and drum storage areas;
- b. Respondent’s SWPPP failed to properly identify the coolant storage areas; and
- c. Respondent’s SWPPP failed to identify the stormwater outfall associated with the drainage structure to the north of Respondent’s part/office building.

28. Respondent’s failure to provide a complete and adequate SWPPP is a violation of the terms and conditions of its Permit, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Failure to Conduct Routine Facility Inspections

29. The Section 4.1 of Respondent’s Permit provides Routine Facility Inspection procedures, which states, “*Conduct routine facility inspections of all areas of the facility where industrial materials or activities are exposed to stormwater, and of all stormwater control measures used to comply with the effluent limits contained in this permit. Routine facility*

inspections must be conducted at least quarterly (i.e., once each calendar quarter) although in many instances, more frequent inspection (e.g., monthly) may be appropriate for some types of equipment, processes, and control measures or areas of the facility with significant activities and materials exposed to stormwater. Perform these inspections during periods when the facility is in operation."

30. Based on observations and information collected during the EPA Inspection, the Facility failed to conducted routine facility inspections in the 1st quarter of 2014, and the 3rd and 4th quarters of 2015.

31. Respondent's failure to conduct Routine Facility Inspections on a quarterly basis is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Failure to Conduct Benchmark Monitoring

32. Section 6 of Respondent's Permit requires Respondent to collect and analyze stormwater samples and document monitoring activities consistent with the procedures described in the Part 6, Appendix B, and sector specific requirements in Part 8. Section 6.1.7 provides the monitoring periods of the Permit and required that the monitoring requirements of the Permit begin in the first full quarter following the date of discharge authorization. Section 6.2.1.2 provides the Benchmark Monitoring Scheduled and requires that monitoring be conducted quarterly for the first four full quarters of permit coverage. Section 8.N.6 of the Permit provides the parameters required to be sampled. These parameters include: Chemical Oxygen Demand, Total Suspended Solids, Total Recoverable Aluminum, Total Recoverable Copper, Total Recoverable Iron, Total Lead and Total Recoverable Zinc.

33. Section 2 of Respondent's SWPPP does not provide procedures for conducting benchmark monitoring. Respondent's SWPPP states, "Outfall monitoring is not required."

34. Based on observations and information collected during the EPA Inspection, the Facility partially conducted monitoring for two quarters during September 2012 and April 2013. According to the laboratory information provided, the September 2012 samples were collected on September 5, 2012, and were collected from an unknown outfall for the parameters of Total Aluminum, Total Iron, Total Lead and Total Suspended Solids. The September 2012 monitoring activity failed to monitor for the following parameters: Chemical Oxygen Demand, Total Recoverable Copper, Total Recoverable Zinc and Hardness. The April 2013 samples were received by the laboratory on April 26, 2013, and were collected at Outfalls #2 and #3 for the parameters of Total Aluminum, Total Iron, Total Lead and Total Suspended Solids. The September 2012 monitoring activity failed to monitor for the following parameters: Chemical Oxygen Demand, Total Recoverable Copper, Total Recoverable Zinc and Hardness. Based on this data, the Facility failed to conduct four quarters of benchmark monitoring from October 2012 through September 2013 following issuance of the Permit.

35. Respondent's failure to conduct benchmark monitoring for four quarters following the issuance of the Permit is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Failure to Conduct Visual Assessments

36. Section 4.2.1 of Respondent's Permit requires that Respondent collect a stormwater sample from each outfall and conduct a visual assessment of the sample during each quarter of the entire permit. The Permit requires that each sample be visually inspected for the following water quality characteristics: color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen and other obvious indicators of stormwater pollution.

37. Based on observations and information collected during the EPA Inspection, Respondent only conducted quarterly visual assessments of discharged stormwater on June 9, 2015 (2nd quarter of 2015) and September 23, 2016 (3rd quarter 2016). Respondent failed to conduct quarterly visual assessments between October 2012 and September 2016.

38. Respondent's failure to conduct quarterly visual assessments of stormwater samples during the course of the Permit is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Failure to Conduct Comprehensive Site Inspections

39. Section 4.3.1 of Respondent's Permit provides Comprehensive Site Inspection procedures and requires that an annual comprehensive site inspection be conducted once each calendar year. The Permit requires that the inspection cover all areas of the facility affected by the requirements of the permit including the areas identified in the SWPPP as potential pollutant sources.

40. Based on the observations and information collected during the EPA Inspection, the Facility failed to conduct annual comprehensive site inspections during the course of permit from 2012 through 2014.

41. Respondent's failure to conduct annual comprehensive site inspections is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

ORDER FOR COMPLIANCE

Based on the foregoing ALLEGATIONS and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED and Respondent hereby CONSENTS to take the actions described below.

42. Within thirty (30) days of the Effective Date, Respondent shall commence actions necessary to correct the deficiencies identified in this Order and to come into compliance with all of the applicable requirements of its Permit, including, but not limited to:

- a. Conduct a comprehensive evaluation of Permit #NER910314 and ensure that the SWPPP is revised to ensure it is compliant with all applicable permit conditions;
- b. Conduct a comprehensive evaluation of the Best Management Practices (“BMPs”) currently being utilized to control the discharge of pollutants. The evaluation shall determine the effectiveness of the current BMPs and provide options for additional or increased BMPs at the site. The evaluation should ensure that the selected BMPs are in compliance with the permit requirements;
- c. Develop a sampling plan necessary to conduct quarterly monitoring and sampling of stormwater runoff for the parameters listed in Table 8.N-1 of Respondent’s Permit;
- d. Develop a mechanism to evaluate the quarterly sampling data and incorporate any necessary corrective actions or changes into the SWPPP;
- e. Revise and update components of the SWPPP to describe all improved BMPs, corrective actions, and the documentation of corrective action reports; and
- f. Ensure that the sampling procedures meet all applicable requirements of 40 C.F.R. Part 136.

43. Within forty-five (45) days of the effective date of this Order, the Respondent shall submit a written report to provide the following:

- a. A copy of the facility’s updated SWPPP, as updated to reflect all changes made pursuant to the preceding paragraph;
- b. A detailed description of all actions taken to date to achieve compliance with the current NPDES Permit conditions;
- c. A detailed description of the BMP evaluation and BMP plan of action selected to implement changes in order to ensure discharges of pollutants are below the permit’s reference benchmark concentration levels; and
- d. A detailed description of the stormwater sampling plan and how the results will be evaluated to ensure BMPs are upgraded to prevent future exceedances of benchmark concentrations.

Quarterly Reporting

44. Upon the effective date of this Order, Respondent shall submit quarterly reports (by no later than, October 28, January 28, April 28 and July 28) to the EPA, with a copy to NDEQ. The Quarterly Report shall describe the actions taken by Respondent to comply with the terms of this Order and the applicable stormwater permit within the prior calendar quarter (July to September, October to December, January to March, April to June). The quarterly reports shall include, at a minimum, the following information:

- a. Progress Report – a description, with dates, of activities completed under this Order within the reporting period, including a clear statement as to whether each item identified in the Schedule was completed on time and successfully, and the results achieved;
- b. Anticipated Actions – a brief list of the activities planned to comply with the terms of this Order during the quarterly reporting period and a statement as to whether any delays are expected, and if so, an explanation of the reason for the delay in meeting the requirements of this Order and/or permit; and
- c. Submit to the EPA a copy of all submittals made to NDEQ under the applicable stormwater permit for the Facility.

General Provisions

Effect of Compliance with the Terms of This Order for Compliance

45. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

46. Respondent shall comply with all other applicable laws, regulations, standards and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards and requirements including any such laws, regulations, standards or requirements that may become effective during the term of this Order.

47. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et. seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines or other appropriate relief under the Act for any violation whatsoever. By entering into this Order, Respondent does not waive or abandon any defenses it may have to any enforcement action by the EPA to recover civil penalties.

Submittals

48. All documents to be submitted to the EPA and NDEQ under this Order shall be submitted by mail or email transmittal to:

Stephen Pollard, or designate
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
pollard.stephen@epa.gov

Shelley Schneider, Administrator
Water Permits Division
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
PO Box 98922
Lincoln, NE 68509-8922

Certification

49. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

Access and Requests for Information

50. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

51. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

52. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

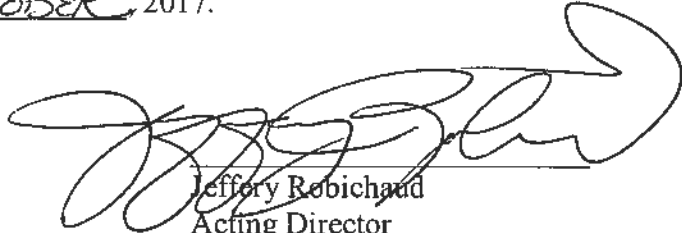
Termination

53. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the

requirements of this Order have been met and shall not be unreasonably withheld once the requirements of this Order have been met.

For the Complainant, United States Environmental Protection Agency

Issued this 23RD day of OCTOBER 2017.



Jeffrey Rebichaud
Acting Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Shirley M. Whitney

Issued this 29th day of August, 2017.

Shirley Whitney
Signature

Shirley Whitney - OWNER
Name
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Ms. Shirley M. Whitney
Owner
Capital City Auto Recyclers
6506 Grover Street
Lincoln, Nebraska 68106

10.25.17
Date

