

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

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. CWA-07-2022-0145
Sioux City Foundry Company,)	
)	ADMINISTRATIVE ORDER
Respondent)	ON CONSENT
)	
Proceedings under Section 309(a)(3) of)	
the Clean Water Act, 33 U.S.C.)	
§ 1319(a)(3))	

1. This Administrative Order on Consent (“Order”) is issued pursuant to the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(a)(3), to Respondent Sioux City Foundry Company (“Sioux City Foundry” or “Respondent”). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division.

2. Respondent is a corporation chartered under the laws of the state of Iowa.

3. The EPA and Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the objective of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the parties’ intent through entering into this Order to address Respondent’s violation of its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater. As set forth in this Order, the parties have 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 Order, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual or legal allegations in this Order, except that Respondent admits the jurisdictional allegations herein. Respondent 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.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of an NPDES permit.

7. 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.

8. 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) requires, in relevant part, that a discharge of stormwater associated with industrial activity comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. Pursuant to Section 402(p) of the CWA, the EPA has promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

10. 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.

11. 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 stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.”

12. Included in the categories of facilities considered to be engaging in “industrial activity” are facilities in Standard Industrial Classification (“SIC”) Code 3441. *See* 40 C.F.R. § 122.26(b)(14)(ii).

13. Sioux City Foundry (the “Facility” or the “Site”), located at 801 Division Street, Sioux City, Iowa, is authorized to discharge stormwater associated with industrial activities under Iowa Department of Natural Resources (“IDNR”) General Permit No. 1 (NPDES Permit No. IA3870-3715) (the “General Permit”). The Facility was first authorized under the General Permit on November 24, 1998. The current General Permit is effective through February 28, 2023.

14. IDNR is the state agency with the authority to administer the federal NPDES program in Iowa.

15. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

Allegations of Fact and Conclusions of Law

16. Respondent is a corporation, so is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

17. Respondent is and was the owner and operator of the Facility at all times relevant to this action.

18. The Facility comprises approximately 12 acres of a 23.8-acre property, located approximately 140 yards from the Floyd River, a navigable water.
19. The Facility's activities include, but are not limited to welding, cutting, painting, and storing of steel and rebar; coating of rebar with epoxy; and abrasive blasting.
20. Since at least 2015, the Facility has been subject to reporting requirements under Section 313 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), otherwise known as the as the Toxics Release Inventory ("TRI").
21. Between 2017 and 2021, the Facility managed approximately 100,000 pounds of TRI chemicals per year, mostly through recycling. Over the past 5 years, the Facility has recycled an average of 51,579 pounds of chromium, 1,249 pounds of lead, 35,568.9 pounds of manganese, and 49,971 pounds of nickel.
22. The Facility discharges stormwater through 21 outdoor storm sewer inlets to Sioux City's storm sewer system, which discharges to the Floyd River. In addition, six storm sewer inlets are located inside the Facility.
23. The Site has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14) and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
24. The Floyd River is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
25. The Floyd River is impaired by *E. coli* and selenium within the meaning of section 303(d) of the CWA.
26. Stormwater runoff from industrial activity at the Facility 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).
27. Respondent's discharge of pollutants, including discharges of stormwater associated with industrial activity as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

The EPA Inspection

28. On January 18, 2022, EPA personnel acting pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Site to determine Respondent's compliance with its NPDES permit and the CWA.
29. During the inspection, the EPA inspector reviewed Respondent's records and obtained copies of Respondent's documents related to the General Permit, including but not limited to the Facility's stormwater pollution prevention plan ("SWPPP") and inspection records. The EPA inspector also toured the facility, observed discharge locations, and photographed various stormwater-related areas.

30. A copy of the Inspection report was sent electronically to Respondent by the EPA on March 8, 2022.

Findings of Violation

31. Part III.C of the General Permit requires Respondent to develop and implement a SWPPP to ensure the design, implementation, management, and maintenance of Best Management Practices (“BMPs”) in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the Facility. Part III.C of the General Permit further provides that implementation of the BMPs specified in the SWPPP are enforceable requirements of the Permit.

32. Part III.C.4.F of the General Permit requires additional elements in a SWPPP for facilities subject to reporting requirements under Section 313 of EPCRA.

Count 1: Failure to Conduct Discharge Monitoring for TRI Chemicals

33. Part V.B.1 of the General Permit sets forth monitoring requirements for facilities subject to requirements to report releases into the environment under the TRI for, *inter alia*, stormwater discharges associated with industrial activity that come into contact with any equipment, tank, container or other vessel used for storage of a EPCRA Section 313 water priority chemical.

34. Part V.B.1.A of the General Permit requires that facilities subject to TRI requirements test stormwater for twelve parameters, including any EPCRA Section 313 water priority chemical for which the facility is subject to reporting requirements under Section 313 of EPCRA.

35. Part V.B.1.B of the General Permit requires that sampling at facilities subject to the TRI requirements be conducted at least annually except as provided by Parts V.B.13 or V.B.14 of the General Permit. Part V.B.13 provides for the collection of samples from a discharge resulting from a storm event. Part V.B.14 describes how a discharger may obtain a written waiver when unable to collect samples due to adverse climactic conditions.

36. Section 9.0 of Respondent’s SWPPP states that the facility shall retain for a three-year period from the date of sample collection or for the term of the permit, whichever is greater, records of all monitoring information collected during the term of this permit.

37. The Facility has not conducted discharge monitoring since at least March 1, 2018, when the current General Permit went into effect. Respondent has no records of stormwater discharge testing at the Facility for any parameter, including EPCRA Section 313 water priority chemicals.

38. Respondent’s failure to test stormwater discharge for TRI chemicals is a violation of the SWPPP and the General Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2: Failure to Identify Pollutant Sources and Significant Materials

39. Part III.C.4.A of the General Permit requires the SWPPP to describe potential sources which may reasonably be expected to add significant amounts of pollutants to stormwater

discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility, and to identify all activities and significant materials which may potentially be significant pollutant sources.

40. Part III.C.4.A.(2) of the General Permit requires the SWPPP to include a narrative description of known significant materials that have been treated, stored or disposed, in a manner to allow exposure to stormwater, during the three years prior to the discharge authorization date of this permit; the method of on-site storage or disposal; materials management practices employed to minimize contact of these materials with stormwater runoff; materials loading and access areas; the location and a description of existing structural and non-structural control measures to reduce pollutants in stormwater runoff; and a description of any treatment the stormwater receives.

41. Respondent's SWPPP does not identify all activities and significant materials which may reasonably be expected to add significant amounts of pollutants to stormwater discharges, such as the stormwater conveyance system inside the building and waste metal fines from the abrasive blasting process. Respondent's Inventory of Significant Materials identifies industrial activities and equipment areas instead of materials. Outdoor disposal operations described in the SWPPP do not describe, or incompletely describe, the methods of on-site storage and disposal of significant materials, including hazardous wastes and TRI chemicals such as chromium, lead, manganese, and nickel.

42. Respondent's failure to identify all activities and significant materials which may reasonably be expected to add significant amounts of pollutants to stormwater discharges is a violation of the General Permit, and therefore a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3: Omissions in SWPPP Site Map

43. Part III.C.4.A.(1) of the General Permit requires the SWPPP 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.

44. The site map contained in Section 4.1 of Respondent's SWPPP does not show all outfalls and does not show the outline of drainage areas of each stormwater outfall.

45. Respondent's failure to include a site map that complies with the General Permit in the SWPPP is a violation of the General Permit, and therefore a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4: Failure to Develop and Implement Appropriate Stormwater Controls

46. Part III.C.4.B of the General Permit requires the Facility to develop a description of stormwater management controls appropriate to the facility and implement such controls. Part III.C.4.B further requires that the appropriateness and priorities of controls in a SWPPP reflect identified potential sources of pollutants at the facility.

47. Part III.C.4.B.(2) of the General Permit requires the SWPPP to assess the potential of various sources at the plant to contribute pollutants to stormwater discharges associated with industrial activity and to include an inventory of the types of materials handled.

48. Part III.C.4.B.(6) of the General Permit requires the SWPPP to contain a narrative consideration of the appropriateness of traditional stormwater management practices. Based on an assessment of the potential of various sources at the plant to contribute pollutants to stormwater discharges associated with industrial activity, the plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained.

49. Part III.C.4.F.(3)(f) of the General Permit requires areas of the facility from which runoff which may contain EPCRA Section 313 water priority chemicals or spills of Section 313 water priority chemicals could cause a discharge to incorporate the necessary drainage or other control features to prevent the discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

50. Part V.M of the General Permit requires Respondent to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of its SWPPP.

51. Respondent's SWPPP fails to include structural and non-structural controls appropriate to the facility and to describe all management controls. Similarly, the Facility has implemented inadequate stormwater controls to prevent the discharge of spilled or improperly disposed material and to ensure the mitigation of pollutants in runoff or leachate.

52. The retention basin at the Facility is not properly operated and maintained.

53. Covered scrap metal dumpsters listed as a structural control in the SWPPP are not present.

54. The facility has not provided coverage to the intermediate storage area of tote bags containing metal fines.

55. Respondent's failure to include appropriate structural controls in the SWPPP, and to implement and maintain those controls, is a violation of the General Permit, and therefore a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5: Failure to Conduct Preventative Maintenance and Good Housekeeping

56. Part III.C.4.B.(3) of the General Permit requires the SWPPP to describe a preventive maintenance program that involves inspection and maintenance of stormwater 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.

57. Sections 6.0 and 7.2 of the SWPPP require Respondent to implement a preventative maintenance program and describe that program. Section 7.2 of the SWPPP requires periodic inspection and evaluation of structural controls, including scrap metal dumpsters.

58. Part III.C.4.B.(4) of the General Permit requires the Facility to implement good housekeeping practices that result in the maintenance of a clean, orderly facility.

59. Section 6.0 of the SWPPP requires Respondent to implement good housekeeping practices designed to maintain a clean and orderly work environment, reducing the potential for significant materials to be exposed to stormwater.

60. Respondent does not have a preventative maintenance program for all stormwater management devices, including the Facility's stormwater conveyance system or retention basin and its secondary containment.

61. The Facility has not implemented good housekeeping efforts such as picking up trash and debris within the rebar storage areas and sealing the bagged fines from abrasive blasting activities prior to placing them outdoors for disposal.

62. Respondent's failure to describe and implement a preventative maintenance program, properly operate and maintain all facilities and systems of treatment and control, and implement good housekeeping practices is a violation of the SWPPP and the General Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6: Failure to Conduct Employee Training

63. Part III.C.4.B(8) of the General Permit requires the SWPPP to identify and describe periodic dates for employee training programs that inform personnel at all levels of responsibility of the components and goals of the SWPPP.

64. Part III.C.4.F(3)(i) of the General Permit, which applies to facilities subject to TRI reporting requirements, provides that employee training shall be conducted at intervals specified in the plan, but not less than once per year.

65. Section 8.0 of the SWPPP requires annual training to inform personnel of the components and goals of the SWPPP.

66. Respondent did not train personnel on the SWPPP in 2021.

67. Respondent's failure to train personnel on the SWPPP is a violation of the SWPPP and the General Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance

68. Based on the Findings set forth above, and pursuant to of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), the EPA hereby orders Respondent, and Respondent hereby agrees, to take the actions described below.

69. In accordance with this Order, Respondent shall take all necessary actions, including immediate interim measures, to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all the applicable requirements of the General Permit and its SWPPP, including, but not limited to:

- a. Conducting appropriate discharge monitoring for TRI chemicals;
- b. Identifying all activities and significant materials which may potentially be significant pollutant sources, and creating an inventory of significant materials;
- c. Conducting proper maintenance of stormwater management controls;
- d. Conducting appropriate employee training;
- e. Describing in the SWPPP and implementing a preventative maintenance program, properly operating and maintaining all facilities and systems of treatment and control, and implementing good housekeeping practices; and
- f. Evaluating the SWPPP, including the accuracy of the descriptions of the Site, maps of the Site, drainage patterns, and stormwater management controls, and revising as needed.

70. Respondent shall retain a qualified consultant or engineer to perform a study of the Site and prepare a plan to address the violations cited above. All persons under the direction and supervision of Respondent's consultant must possess all necessary professional licenses required by law.

71. Within 60 days of the Effective Date of this Order, the Respondent shall submit to the EPA and IDNR a written report describing the results of its consultant's study and its plan to comply with the General Permit and the CWA (hereinafter "60-day Report"). At a minimum, the 60-day Report shall include:

- a. A copy of TRI chemical monitoring reports that have been conducted since the Effective Date of this Order;
- b. A written description and photo documentation, if appropriate, of all actions taken to date to achieve compliance with the General Permit; and
- c. A plan to achieve compliance with the General Permit to the extent the work is not already completed, including a milestone schedule to take corrective actions and complete all work necessary as soon as possible but no later than within one year of the Effective Date of this Order.

72. The EPA may, after review of any revised or updated SWPPP, visual stormwater examination reports, description of actions taken and plans to take corrective actions submitted

by Respondent, provide written comments and suggestions regarding such submittals. Review and comment on the SWPPP or other submissions by the EPA does not relieve Respondent of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

73. After review of the information submitted by Respondent pursuant to the above paragraphs, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate and may modify this Order or initiate a separate enforcement action, as appropriate.

74. *Quarterly Progress Reports.* After submission of the 60-day Report required above and until submission of the Completion Report, Respondent shall submit quarterly progress reports to the EPA and IDNR describing the actions it has taken to ensure continued compliance with the terms of its Permit and progress in completing the work under this Order. Each report shall include, at a minimum:

- a. A description of implementation and/or revision of the SWPPP during the previous three (3) month period;
- b. A description of work and other actions taken to construct the structural controls and/or implement other controls in the previous three (3) month period; and
- c. Copies of all relevant documentation regarding the activities described pursuant to subparagraphs (a) and (b).

75. *Completion Report.* Once the work identified in the 60-day report has been completed, Respondent shall submit a completion report to the EPA and IDNR, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete (hereinafter the "Completion Report"). The Completion Report must be submitted within thirty (30) days after work has been completed.

Submittals

76. All submittals to EPA that are required of Respondent by this Order shall, where possible, be made by electronic submission to: *dix.caitlin@epa.gov*.

Caitlin Dix
U.S. Environmental Protection Agency – Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

77. All documents required to be submitted to IDNR pursuant to this Order shall be submitted by electronic mail to: *ted.petersen@idnr.gov*.

Ted Petersen, Environmental Program Supervisor
Iowa Department of Natural Resources
502 E 9th St
Des Moines, IA 50319

78. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy to the mailing addresses provided above.

79. All submissions to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described in 40 CFR 122.22:

I certify that the Sioux City Foundry Company has complied with all the applicable requirements of the Order for Compliance. I also 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 violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

80. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial 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.

81. 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. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

82. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of his responsibility to obtain any required local, state, and/or federal permits.

Access and Requests for Information

83. Nothing in this Order shall limit the EPA's right to obtain access to and/or to inspect the 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

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

Effective Date

85. This Order shall be effective upon signature by the EPA. Any amendments shall become effective and enforceable on the date that the amendment is signed by all parties. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from the effective date.

Modification

86. The EPA may subsequently amend this Order, upon written agreement with Respondent, in accordance with the EPA's authority under the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order. All deadlines for performance under this Order may be extended upon written approval by EPA, at its sole discretion, without formal amendment to the Order.

Termination

87. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

Signatories

88. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this Order. This Order may be signed in part and counterpart by each party.

Electronic Service

89. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: vcorbin@siouxcityfoundry.com.

For Respondent, Sioux City Foundry Company:

Signature: Adam Galinsky

Date: 2-27-23

Name: Adam Galinsky

Title: Director of Operations

For Complainant, the U.S. Environmental Protection Agency, Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7
R7_Hearing_Clerk_Filings@epa.gov

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Caitlin Dix
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
dix.caitlin@epa.gov

For Respondent:

Valerie Corbin, EHS Director
Sioux City Foundry
801 Division Street
Sioux City, Iowa 51105
vcorbin@siouxcityfoundry.com

Date

Signature