

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
DONALD R. PURK,) Docket No. CWA-07-2017-0026
D.B.A. PURK'S AUTO & RECYCLING,)
)
Respondent.)
)
Proceedings under Section 309(a)(3) of the) FINDINGS OF VIOLATION
Clean Water Act, 33 U.S.C. § 1319(a)(3).) AND ORDER FOR COMPLIANCE
ON CONSENT
_____)

PRELIMINARY STATEMENT

1. The following Findings of Violation are made and Administrative Order for Compliance on Consent ("Order") is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator of EPA Region 7, and redelegated to the Director of the Water, Wetlands and Pesticides Division of EPA Region 7.

2. The Respondent in this matter is Donald R. Purk, doing business as Purk's Auto & Recycling ("Respondent").

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals 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 noncompliance by the Respondent of its National Pollutant Discharge Elimination System ("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 or Findings of Violation in this 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.

STATUTORY AND REGULATORY FRAMEWORK

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the terms “discharge of a pollutant” and “discharge of pollutants” as, *inter alia*, any addition of any pollutant to navigable waters from any point source.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” as “dredged spoil, solid waste, incinerator residue, 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.”

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2, and which include tributaries to waters of the United States.

10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.”

11. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” as any individual, corporation, partnership, or association.

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

13. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

14. Pursuant to 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of “pollutants” from any “point source” into “waters of the United States,” as those terms are defined at 40 C.F.R. § 122.2.

15. The regulations at 40 C.F.R. § 122.26(a)(1)(ii) and 40 C.F.R. § 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.

16. The regulation at 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity,” in part, as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 5093, which includes establishments primarily engaged scrap and waste material recovery including battery reclaimers, salvage yards, and automobile recyclers. *See* 40 C.F.R. § 122.26(b)(14)(vi).

17. The regulation at 40 C.F.R. § 122.2 defines “discharge” as the “discharge of a pollutant,” which is in turn defined by 40 C.F.R. § 122.2 as any addition of any pollutant or combination of pollutants to waters of the United States from any point source, as those terms are defined at 40 C.F.R. § 122.2.

18. The regulation at 40 C.F.R. § 122.26(b)(13) defines “storm water” as storm water runoff, snow melt runoff, and surface runoff and drainage.

19. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.

20. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

FACTUAL BACKGROUND AND FINDINGS OF VIOLATION

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

22. At all times relevant to this action, Respondent was the owner and operator of an automotive salvage yard comprised of approximately 4 acres located at or near 3436 A Highway 21 and 3440 A Highway 21 in Salt Creek Township, Tama County, Iowa (“Facility”).

23. Stormwater runoff from the Facility constitutes “stormwater discharges associated with industrial activity,” as defined by 40 C.F.R. § 122.26(b)(14).

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

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

26. Respondent’s Facility is bordered to the north by an unnamed tributary that flows approximately one-third of a mile and discharges into the Salt Creek. Salt Creek flows approximately seven miles to the Iowa River. Salt Creek and its tributaries are “waters of the United States” within the meaning of 40 C.F.R. § 232.2 and, therefore, “navigable waters” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

28. The Iowa Department of Natural Resources issued NPDES Permit No. IA-2128-9210 to Respondent on February 27, 2012. The permit will expire on February 27, 2017. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Facility.

29. On May 4 and 5, 2016, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Facility to determine Respondent’s compliance with its NPDES permit and the CWA.

30. The EPA inspection revealed that Respondent was in violation of its NPDES permit as follows:

Count 1: Failure to Develop a SWPPP

31. Part III.C. of Respondent’s NPDES permit requires Respondent to develop a Stormwater Pollution Prevention Plan (“SWPPP”). The SWPPP must include, among other things, identification of potential pollutant sources, description of stormwater management controls for identified pollutant sources, and an implementation plan.

32. During the EPA inspection, the inspector documented that the facility has not developed the required SWPPP.

33. Respondent’s failure to develop a SWPPP is a violation of the terms and conditions of Respondent’s NPDES permit, implementing Sections 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a) and 1318, and as such, is a violation of a permit condition established pursuant to Section 402 of the Act and EPA’s implementing regulations.

Count 2: Failure to Conduct Visual Stormwater Inspections

34. Part III.C.4., Section C. through C.(5), of Respondent's NPDES permit states that the permittee shall, at a minimum, inspect equipment and plant area no less than once a year, to include inspection of potential pollutant source areas and stormwater management controls.

35. During the EPA inspection, the inspector documented that visual inspections are not being conducted as required by the permit.

36. Respondent's failure to conduct visual stormwater inspections is a violation of the terms and conditions of Respondent's NPDES permit, implementing Sections 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a) and 1318, and as such, is a violation of a permit condition established pursuant to Section 402 of the Act and EPA's implementing regulations.

Count 3: Failure to Conduct Employee Training

37. Part III.C.4., Section B.(8), of Respondent's NPDES permit requires SWPPP employee training, which includes information regarding the SWPPP components and goals, spill response, good housekeeping, and material management practices.

38. During the EPA inspection, the inspector documented that Respondent has not conducted SWPPP training as required by the NPDES permit.

39. Respondent's failure to conduct employee training is a violation of the terms and conditions of Respondent's NPDES permit, implementing Sections 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a) and 1318, and as such, is a violation of a permit condition established pursuant to Section 402 of the Act and EPA's implementing regulations.

Count 4: Inadequate Stormwater Management Control and Good Housekeeping Practices

40. Part III.C.4, Section B, of Respondent's NPDES permit requires Respondent, in pertinent part, to develop a plan describing stormwater management controls, including good housekeeping practices, spill prevention and procedures, best management practices to control pollutant sources in stormwater, and to implement those measures and controls.

41. During the EPA inspection, the inspector documented that no such plans, procedures, or good housekeeping practices were in place to prevent or control pollutant sources and associated stormwater discharges. Such conditions could lead to unauthorized discharges to surface waters.

42. Respondent's failure to develop required plans, procedures, and good housekeeping practices is a violation of the terms and conditions of Respondent's NPDES permit, implementing Sections 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a) and 1318, and as such, is a violation of a permit condition established pursuant to Section 402 of the Act and EPA's implementing regulations.

ORDER FOR COMPLIANCE

Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED, and Respondent agrees, to take the following actions to eliminate violations of the CWA:

43. Within sixty (60) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its industrial stormwater NPDES permit.

44. Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA a written description and photo documentation of the actions it has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

45. Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA a copy of the completed SWPPP.

46. Within thirty (30) days of completion of the SWPPP, Respondent shall conduct SWPPP training. Respondent shall submit to EPA copies of the training logs within fifteen (15) days of the completion of such SWPPP training.

47. Respondent shall submit to EPA a copy of the annual visual stormwater inspection conducted for calendar year 2017. The report shall be submitted to the EPA by January 31, 2018.

48. All submitted documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to:

acord.angela@epa.gov

Electronic submissions 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 as provided in this Paragraph to:

Angela Acord, Compliance Officer
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

GENERAL PROVISIONS

Effect of Compliance with the terms of this Order

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

50. 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 Section 309 of the CWA, 33 U.S.C. § 1319, 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.

Access and Requests for Information

51. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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

52. 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.

Parties Bound

53. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

Failure to Comply

54. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the Northern District of Iowa may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply

with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Act and for any violations of this Order.

Effective Date

55. The terms of this Order shall be effective and enforceable against Respondent on the date this Order is signed by the EPA.

Termination

56. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

For Respondent, Donald R. Purk, d.b.a. Purk's Auto & Recycling:



Signature

3-27-2017
Date

Don Purk
Name

Owner
Title

For the Complainant, United States Environmental Protection Agency, Region 7:



JEFFERY ROBICHAUD
Acting Director
Water, Wetlands and Pesticides Division

DATE

4/5/17



JARED PISSETTO
Assistant Regional Counsel
Office of Regional Counsel

DATE

4/5/17

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further 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:

Donald R. Purk
3436 Iowa Highway 21
Belle Plaine, Iowa 52208

and to:

Ted Peterson, Section Chief
Iowa Department of Natural Resources
7900 Hickman Road Suite 200
Windsor Heights, Iowa 50324-4404.

Name



Date

4/7/17