

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0094
GBW Railcar Services, LLC)	
)	
Nedgesha, Kansas)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance (“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, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

2. Respondent is GBW Railcar Services, LLC (“Respondent” or “GBW”), a corporation under the laws of the state of Kansas. Respondent is the owner and/or operator of a facility located within the corporate boundary of the city of Nedgesha, Kansas.

Statutory and Regulatory Framework

3. 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 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.

4. 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.

5. 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 NPDES permit issued pursuant to that Section.

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.

Stormwater

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 comply with 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) defines “storm water discharge associated with industrial activity” 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 material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classification 4789 – Transportation Services. See 40 C.F.R. § 122.26(b)(14)(i) and 40 C.F.R. § 122.26(b)(14)(viii).

11. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. The KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) on September 1, 2006, which governs stormwater discharges associated with industrial activity for categories of facilities generally involved in materials handling, manufacturing, transportation, or production. The KDHE reissued the General Permit in 2011, which is effective from November 1, 2011, through October 31, 2016. The KDHE has public noticed a new General Permit, to be effective upon expiration of the current General Permit.

13. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to the KDHE.

14. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”). The SWPPP must contain certain items which are specified in the General Permit, and the SWPPP must specify the Best Management Practices (“BMPs”) (structural, non-structural, and managerial/administrative) to be employed and what controls will be implemented to minimize the contamination of stormwater runoff associated with industrial activity from the site.

EPA’s General Allegations

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

16. Respondent is and was at all times relevant to this action the owner and operator of a railcar servicing facility (“Facility” or “site”), operating under SIC code 4789, comprised of approximately 37 acres located at 701 Klayder Drive, Neodesha, Kansas 66757. The GBW Facility is able to service all railcar types in the North American fleet. Facility activities are composed of railcar surface blasting, paint and stencil, certified tank car repair, cleaning & testing, lining, mobile repairs, truck rebuilding and wreck repairs. The Facility has the capacity to accommodate 350 railcars.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge via an unnamed tributary and storm sewer(s) to the Fall River.

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

19. The Facility 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).

20. The Fall River and its tributaries are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. Stormwater runoff from Respondent’s industrial activity at the above referenced site 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).

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

23. Respondent filed a NOI with the KDHE seeking coverage under the General Permit on or about May 10, 2011, with a renewal NOI submitted December 19, 2015.

24. The KDHE issued NPDES General Permit No. KSR000511 (“Permit”) to Watco Mechanical Services, Inc., GBW’s predecessor, on January 9, 2009. Watco notified KDHE of

the ownership name change to GBW on October 9, 2014. The KDHE re-issued the Permit to Respondent; the most recent Permit was effective November 1, 2011, and will expire on October 31, 2016. The Permit governs Respondent's stormwater discharges that are associated with industrial activity at the site.

25. On March 24, 2016, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's site 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. A Notice of Potential Violation was issued at the conclusion of the inspection. A copy of the Inspection report was sent to Respondent by letter dated May 19, 2016, which identified violations including those described below.

EPA's Findings

Count 1

Failure to Implement Measures and Controls

26. The facts stated in Paragraphs 1 through 25 above are re-alleged and incorporated herein by reference.

27. Sections 2.2 and 2.4.3 of the General Permit, as authorized and applicable to the Facility, requires Respondent to review, evaluate, select, install, utilize, operate and maintain best management practices ("BMPs") in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility. The General Permit requires that at a minimum, Respondent's plan for BMPs must contain a listing and description of managerial/administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility, including a schedule, if necessary, for implementing such controls. Specific measures and controls identified in the permit include, but are not limited to, good housekeeping, preventative maintenance, sediment and erosion controls and management of runoff.

28. Section 4.1 of the General Permit, as authorized and applicable to the Facility, requires proper operation and maintenance, at all times, of all facilities and systems of treatment and control which are installed or used to achieve compliance with the requirements of the Permit.

29. As documented by EPA's inspection, Respondent failed to implement and/or operate and maintain stormwater measures and controls as required by the authorization under the General Permit, including, but not limited to, the following:

- a. The grounds of the Facility were covered with slag from the sand blasting operation, and slag pile was observed in the runoff path to outfalls OU03 and OU04;
- b. Significant ground discoloration was observed in the drainage channels that lead to Outfall OU02; and

- c. Improper storage of old parts, mishandling of spills, washing contaminated parts outside, evidence of floatables such as trash and plastic bottles in the surface runoff pathway, and storage of unidentified barrels without proper containment.

30. Respondent's failures to properly operate and maintain adequate measures and controls (BMPs) to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility are violations of the General Permit, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2 Failure to identify all Stormwater Outfalls

31. The facts stated in Paragraphs 1 through 30 above are re-alleged and incorporated herein by reference.

32. Section 2.4.2 of the General Permit, as authorized and applicable to the Facility, states that the SWPPP shall describe potential pollutant sources including all outfalls.

33. Sections 3.1 and 3.2 of Respondent's SWPPP identify two outfalls, OF1 and OF2.

34. At the time of EPA's inspection, Respondent had not identified at least four additional outfalls that would allow for the discharge of stormwater from the Facility in the SWPPP, as required by Respondent's authorization under the General Permit. The EPA inspector identified these outfalls as OU01, OU02, OU03 and OU04.

35. Respondent's failures to identify all stormwater outfalls within the SWPPP are violations of the General Permit, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3 Failure to Conduct and/or Document Visual Stormwater Monitoring

36. The facts stated in Paragraphs 1 through 35 above are re-alleged and incorporated herein by reference.

37. Section 2.4.5 of the General Permit, as authorized and applicable to the Facility, states that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year at all outfalls. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

38. Section 8 of Respondent's SWPPP addresses the expectations and procedures for conducting and documenting facility visual inspections, as required by the Permit, including visual inspections of discharge areas, i.e., outfalls, at the facility, as described in Section 3.1 of the SWPPP.

39. At the time of EPA's inspection, Respondent had not conducted and/or did not have any documentation of visual inspections of stormwater at the stormwater outfalls identified in paragraph 34, above, as required by Respondent's authorization under the General Permit.

40. Respondent's failures to conduct and/or document visual stormwater monitoring is a violation of the General Permit, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance

41. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

42. 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 the effective General Permit, as authorized and applicable to the Facility.

43. Within ninety (90) days of the effective date of this Order, Respondent shall provide a report to the EPA, with a copy to the KDHE, that includes:

- a. A copy of the results from each visual monitoring event that has been conducted since the March 2016 EPA Inspection;
- b. A copy of reports for each quarterly site inspection conducted since the March 2016 EPA Inspection;
- c. A copy of the report generated from any annual comprehensive site evaluation that has been conducted since the March 2016 EPA Inspection;
- d. A description of all actions taken and all structural controls installed and non-structural controls implemented since the March 2016 EPA Inspection to bring the Facility into full compliance with all conditions and limitations of the Permit;
- e. A description of all additional actions, structural controls and non-structural controls planned to bring the Facility into full compliance with all conditions and limitations of the Permit; and
- f. An updated, amended, revised or modified SWPPP that identifies all outfalls and BMPs used onsite.

By no later than March 1, 2017, and September 1, 2017, Respondent shall provide to the EPA, with a copy to KDHE, a report containing, at a minimum, the following information for the previous six (6) months:

- a. A copy of the report for each visual monitoring event, quarterly site inspection and annual comprehensive site evaluation that has been conducted;
- b. A description of all employee training that has been conducted; and
- c. A detailed description of all actions, structural controls and non-structural controls that have been implemented or that are planned to bring the Facility into full compliance with all conditions and limitations of the Permit, including any updates or amendments to the SWPPP.

Reports/Submissions

44. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement below, shall be submitted by electronic mail to:

bruno.jodi@epa.gov
Jodi Bruno, or her successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

45. 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 to the EPA shall be submitted in hard-copy to the address provided above.

46. All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Jaime Gaggero, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

47. Each submission requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

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 violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

48. 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.

49. 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

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 judiciary 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

52. 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

53. 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 District of Kansas 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.

Judicial Review

54. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

Opportunity to Confer

55. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondents. Within ten (10) days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to the EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Effective Date

56. The terms of this Order shall be effective and enforceable against Respondent thirty (30) days after receipt of an executed copy of the Order.

Termination

57. 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 the Complainant, U.S. Environmental Protection Agency:

Issued this 6th day of October, 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



Howard Bunch
Office of Regional Counsel

Certificate of Service

I certify that on the date noted below the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent were delivered 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 sent a copy of the foregoing Order for Compliance by certified mail to Respondent and first class mail to the State:

James Peck, Plant Superintendent
GBW Railcar Services
701 Klayder Drive
Neodesha, Kansas 66757

and

Jaime Gaggero, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

10/11/2016
Date

[Signature]
Signature