

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF CALDWELL

Caldwell, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0037

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,320 per day for each day during which the violation continues, up to a maximum penalty of \$278,995. See also 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Caldwell, Idaho (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the violations, “waters of the United States” was defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 230.3(s) (2014).

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.8. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharges from facilities classified under Standard Industrial Classification code 4581 (Airports, Flying Fields, and Airport Terminal Services). 40 C.F.R. § 122.26(b)(14).

3.9. EPA is authorized pursuant to CWA Section 402(a), 33 U.S.C. § 1342(a), to administer the NPDES permitting program for stormwater discharges associated with industrial activity in the state of Idaho.

3.10. EPA issued the Multi-Sector General Permit for discharges of stormwater associated with industrial activity on June 4, 2015, and the permit became effective in the state of Idaho on August 12, 2015 (MSGP).

3.11. Section 1.1.1 of the MSGP states that facilities engaged in certain industrial activities, including activities covered under Standard Industrial Classification code 4581, are eligible to apply for permit coverage to discharge stormwater to surface waters.

General Allegations

3.12. Respondent is a municipality in the state of Idaho and is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.13. At all times relevant to this action, Respondent owned and operated the Caldwell Industrial Airport located at 4814 East Linden Road in Caldwell, Idaho (Facility).

3.14. The primary operations conducted by Respondent at the Facility include operating and maintaining the airport and servicing, repairing, maintaining, and storing aircraft, which are activities categorized under Standard Industrial Classification code 4581 (Airports, Flying Fields, and Airport Terminal Services).

3.15. The Facility, which was under Respondent's control at all times relevant to this action, discharges stormwater into Indian Creek via eleven identified discharge points (Outfalls AP01 – AP11). The Facility's stormwater discharges contain "pollutants" within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.16. Outfalls AP01 – AP11 are each a "point source" as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.17. Indian Creek is a perennial tributary of the Boise River. The Boise River is a perennial tributary of the Snake River. The Snake River is a perennial tributary of the Columbia River, which flows to the Pacific Ocean. Thus, Indian Creek is a "navigable water" as defined under Section 502(7) of the Act, 33 U.S.C. § 1362(7) and is a "water of the United States" within the meaning of 40 C.F.R. § 230.3(s) (2014).

3.18. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by MSGP permit number IDR050007.

3.19. At all times relevant to this Order, Respondent was implementing a Stormwater Pollution Prevention Plan (SWPPP) at the Facility.

3.20. On October 28, 2019, inspectors with the Idaho Department of Environmental Quality (IDEQ) conducted a compliance evaluation inspection at the Facility to determine

Respondent's compliance with the MSGP and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

3.21. As part of the inspection, IDEQ requested records concerning Respondent's compliance with the MSGP for the Facility. Respondent provided IDEQ with the Facility's SWPPP, discharge monitoring reports, chains of custody, annual reports, inspection forms, and quarterly visual assessments.

Alleged Violations

3.22. As described below, EPA alleges that, after obtaining MSGP coverage, Respondent violated certain terms and conditions of the MSGP and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Count 1: Failure to Perform and Document Routine Quarterly Inspections

3.23. Section 3.1 of the MSGP requires Respondent to perform and document routine quarterly Facility inspections.

3.24. EPA alleges that Respondent violated Section 3.1 of the MSGP, by failing to perform or provide documentation of routine quarterly inspections of the Facility during the second quarter of 2016, third quarter of 2016, fourth quarter of 2016, first quarter of 2017, third quarter of 2017, fourth quarter of 2017, first quarter of 2018, second quarter of 2018, third quarter of 2018, first quarter of 2019, second quarter of 2019, and third quarter of 2019. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2: Failure to Minimize Erosion

3.25. Section 2.1.2.5 of the MSGP requires the facility to minimize erosion by stabilizing exposed soil.

3.26. EPA alleges that Respondent violated Section 2.1.2.5 of the MSGP by failing to stabilize exposed soil near outfall AP10 resulting in erosional gullies and potential for discharge of sediments. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3: Failure to Minimize the Potential for Leaks, Spills, and Other Releases

3.27. Section 2.1.2.4 of the MSGP requires Respondent to minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur in order to minimize pollutant discharges. Section 2.1.2.4 of the MSGP requires Respondent to conduct spill prevention and response measures including keeping spill kits on-site located near areas where spills may occur.

3.28. EPA alleges that Respondent violated Section 2.1.2.4 of the MSGP, by failing to keep a spill kit or instructions for spill response near Fueling Station 1 or Fueling Station 2 at the Facility. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4: Failure to Minimize the Exposure of Fueling Operations

3.29. Section 2.1.2.1 of the MSGP requires Respondent to minimize the exposure of fueling operations areas to rain, snow, snowmelt, and runoff in order to minimize pollutant discharges.

3.30. EPA alleges that Respondent violated Section 2.1.2.1 of the MSGP by failing to implement adequate control measures to minimize exposure of fueling operations to rain, snow, snowmelt, and runoff. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5: Inadequate SWPPP

3.33. Section 8.S.3.3 of the MSGP requires Respondent to clearly identify all operators and their separate SWPPP contributions in a comprehensive SWPPP for the Facility. EPA alleges that Respondent violated Section 8.S.3.3 of the MSGP by failing to include in a comprehensive SWPPP for the Facility any references to tenants of the Facility who qualified as operators.

3.34. Section 5.2.1 of the MSGP requires Respondent to identify in the SWPPP all staff members that comprise the Facility's stormwater pollution prevention team and their individual responsibilities. EPA alleges that Respondent violated Section 5.2.1 of the MSGP by failing to identify in the Facility's SWPPP all staff members that comprise the Facility's stormwater pollution prevention team and the individual responsibilities for those team members.

3.35. Section 5.2.2 of the MSGP requires Respondent to include in the Facility's SWPPP a site map providing a variety of information, including: size of the property in acres; direction of stormwater flow using arrows; locations of all receiving waters in the immediate vicinity of the Facility; indication of which receiving waterbodies are listed as impaired; locations of all stormwater conveyances including ditches, pipes, and swales; locations of potential pollutant sources; locations of stormwater inlets and outfalls with a unique identification code for each for each outfall; indication of whether one or more outfalls are being treated as "substantially identical"; approximate outline of the areas draining to each outfall; locations of activities that are exposed to precipitation, including fueling stations, vehicle and equipment maintenance and/or cleaning areas, and locations and sources of run-on from an adjacent property that contains significant quantities of pollutants. EPA alleges that Respondent

violated Section 5.2.2 of the MSGP by failing to include in the Facility's SWPPP a site map providing: size of the property in acres; direction of stormwater flow using arrows; locations of all receiving waters in the immediate vicinity of the Facility; indication of which receiving waterbodies are listed as impaired; locations of all stormwater conveyances including ditches, pipes, and swales; locations of potential pollutant sources; locations of stormwater inlets and outfalls with a unique identification code for each for each outfall; indication of whether one or more outfalls are being treated as "substantially identical"; approximate outline of the areas draining to each outfall; locations of activities that are exposed to precipitation, including fueling stations, vehicle and equipment maintenance and/or cleaning areas, and locations and sources of run-on from an adjacent property that contains significant quantities of pollutants.

3.36. Section 5.2.3.3 of the MSGP requires Respondent to document in the Facility's SWPPP where potential spills and leaks could occur that could contribute pollutants to stormwater discharges, and the corresponding outfall(s) that would be affected by such spills and leaks. EPA alleges that Respondent violated Section 5.2.3.3 of the MSGP by failing to document in the Facility's SWPPP the potential areas of the Facility where spills and leaks could occur and failing to identify which outfalls would be impacted by a spill or leak.

3.37. Section 5.2.5.1 of the MSGP requires Respondent to document the procedures for preventing and responding to spills and leaks in the Facility's SWPPP. EPA alleges that Respondent violated Section 5.2.5.1 of the MSGP by failing to document in the Facility's SWPPP the procedures for preventing and responding to spills and leaks.

3.38. Section 5.2.5.1 of the MSGP requires Respondent to document the Facility's erosion and sediment controls in the Facility's SWPPP. EPA alleges that Respondent violated

Section 5.2.5.1 of the MSGP by failing to document in the Facility's SWPPP the Facility's erosion and sediment controls.

3.39. Section 5.2.5.1 of the MSGP requires Respondent to include the content of the employee training in the Facility's SWPPP. EPA alleges that Respondent violated Section 5.2.5.1 of the MSGP by failing to document in the Facility's SWPPP the content of the employee training.

3.40. Section 5.2.5.2 of the MSGP requires Respondent to document the Facility's procedures for performing, as appropriate, the types of inspections specified by this permit in the Facility's SWPPP. Section 3.1 of the MSGP requires Respondent to perform routine facility inspections, and Part 3.2 of the MSGP requires Respondent to perform quarterly visual assessments of stormwater discharges from the Facility. EPA alleges Respondent violated Section 5.2.5.2 of the MSGP by failing to include in the Facility's SWPPP adequate descriptions of procedures for routine facility inspections and quarterly visual assessments of stormwater discharges.

3.41. Section 5.2.5.3 of the MSGP requires Respondent to document for each type of monitoring in the Facility's SWPPP the location where samples are collected, parameters of sampling and the frequency of sampling for each parameter, schedules for monitoring at the Facility, any numeric control values, and procedures. EPA alleges Respondent violated Section 5.2.5.3 of the MSGP by failing to provide in the Facility's SWPPP the location where samples are collected, parameters of sampling and the frequency of sampling for each parameter, schedules for monitoring at the Facility, any numeric control values, and procedures.

3.42. Section 5.2.5.3 of the MSGP requires Respondent to document a series of information in the Facility's SWPPP if Respondent intends to use the substantially identical outfall exception for quarterly assessments. EPA alleges Respondent violated Section 5.2.5.3 of the MSGP by failing to document in the Facility's SWPPP the location of each of the substantially identical outfalls, description of the general industrial activities conducted in the drainage area of each outfall, description of the control measures located in the drainage area of each outfall, description of the exposed materials located in the drainage area of each outfall, description of the exposed materials located in the drainage area of each outfall that are likely to be significant contributors of pollutants to stormwater discharges, an estimate of the runoff coefficient of the drainage areas, and why the outfalls are expected to discharge substantially identical effluents.

3.43. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account "the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other

matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$15,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
park.chae@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above other than those alleged violations that will be corrected in accordance with Administrative Order on Consent, Docket Number: CWA-10-2021-0036.

4.11. This Consent Agreement and the Final Order constitute a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of this Consent Agreement.

4.12. Except as described in Subparagraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

February 1, 2021

FOR RESPONDENT:



GARRET L. NANCOLAS
Mayor
City of Caldwell

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10