

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CWA-07-2007-0065
)
Langley Recycling, Inc.)
3557 Stadium Drive) FINDINGS OF VIOLATION,
Kansas City, Missouri 64129) ORDER FOR COMPLIANCE
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region VII and further delegated to the Director of Region VII's Water, Wetlands and Pesticides Division.

2. Respondent is Langley Recycling, Inc., a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

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 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) of the CWA, requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity”, in part, as “facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

9. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R60A on May 30, 2003. The permit governs storm water discharges associated with motor vehicle salvage yards and scrap metal recycling operations.

Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a automobile junkyard or salvage yard known as Langley Recycling, located at 3557 Stadium Drive, Kansas City, Missouri (the Site) with a SIC code of 5015.

13. Storm water, snow melt, surface drainage, and runoff water leaves Respondent’s facility and goes directly into the Blue River. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

16. Respondent discharged pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Storm water runoff from Respondent’s construction 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).

18. 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.

19. Respondent applied for and was issued NPDES permit coverage under the general permit described in paragraph 10 above. MDNR assigned Respondent Permit No. MO-R60A008, which was issued on July 11, 2003.

20. On February 12, 2007 and February 23, 2007, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of storm water at the site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Comply with Narrative Water Quality-Based Effluent Limitations or Conditions

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Paragraph 1 of the Requirements section of the Respondent’s permit states that discharges shall not cause violations of the general criteria in the Water Quality Standards 10 CSR 20-7.031(3), including sheens on the water from oil or greases.

23. The inspection referenced in paragraph 20 above, revealed that Respondent failed to comply with narrative water quality-based effluent limitations. Inspectors noted a visible amount of sheen from oil and grease on the runoff waters exiting the Facility. This sheen remained visible on the runoff waters to the rip-rap on the bank of the river.

24. Respondent's failure to comply with narrative water quality-based effluent limitations or conditions is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 2

Failure to Implement Runoff Control Measures

25. The facts stated in paragraphs 11 through 20 above are herein incorporated.

26. Paragraph 3 of the Requirements section of Respondent's permit requires runoff or run on control measures such as temporary diversion dikes or berms, permanent diversion dikes or berms, right-of-way or perimeter diversion devices, retention and detention basins, sediment traps and barriers.

27. The inspection referenced in paragraph 20 above, revealed that Respondent's pollution control measures, including oil "socks" or barriers were poorly maintained, ripped open and the contents washed away.

28. Respondent's failure to implement runoff pollution control measures is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 3

Failure to Prevent and Contain Spills

29. The facts stated in paragraphs 11 through 20 above are herein incorporated.

30. Paragraph 5 of the Requirements section of Respondent's permit requires that spill prevention, control, and/or management shall be provided sufficient to prevent any spills of these pollutants from entering a water of the state.

31. The inspection referenced in paragraph 20 above, revealed several spots of discoloration and evidence of spills on the floor and on and around the floor drain in the maintenance building.

32. Respondent's failure to prevent and contain spills is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Order For Compliance

33. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 34 through 36.

34. Within thirty (30) 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 violation cited above, and to come into compliance with all of the applicable requirements of the permit including but not limited to the following items:

- a) Ensure that discharges and runoff are free from sheens of oil and grease, as required by the General Permit, paragraph 1.
- b) Ensure that runoff pollution control measures, including, but not limited to, oil "socks" or barriers are properly installed and maintained, as required by the General Permit, paragraph 3.
- c) Ensure that spill prevention, control and/or management be provided to prevent spills of these pollutants from entering waters of the state as required by the General Permit, paragraph 5.

35. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

36. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken

and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

37. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Mr. Raju Kakarlapudi
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

38. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

39. 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.

40. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the Act, 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 Act for any violation whatsoever.

Access and Requests for Information

41. Nothing in this Order shall limit 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

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

Effective Date

43. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA Region VII.

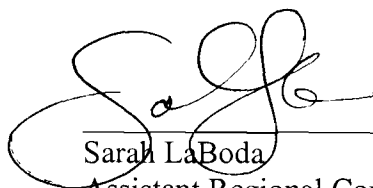
Termination

44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 27th day of July, 2007.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

A handwritten signature in black ink, appearing to read "Sarah LaBoda", is written over a horizontal line. The signature is stylized and cursive.

Sarah LaBoda
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Blaine Liebig, Vice President
Langley Recycling, Inc.
3557 Stadium Drive
Kansas City, Missouri 64129.

And via first class mail to:

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102; and

Mr. Karl Fett
Missouri Dept. of Natural Resources
Kansas City Regional Office
500 NE Colbern Rd
Lee's Summit, Missouri 64086-4710.

8/2/07
Date

Kathy Lovinson
Sender