

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

WESTERN TIMBER PRODUCTS, INC.,

Council, Idaho

Respondent.

DOCKET NO. CWA-10-2022-0003

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 into 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.

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 \$22,584 per day for each day during which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg. 83818 (December 23, 2020) (2021 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 Western Timber Products, Inc. (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. Section 502(12) of the CWA, 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. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, chemical wastes, biological materials, rock, sand and industrial wastes.

3.5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

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

3.7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States.” At the time of the violations, Waters of the United States included, but were not limited to, waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; tributaries of those waters; and wetlands adjacent to those waters. 40 C.F.R. §§ 122.2 (1993), 120.2.

3.8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires an NPDES permit for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources associated with industrial activity and to establish a comprehensive program to regulate sources of stormwater associated with industrial activity.

3.9. The phrase “storm water associated with industrial activity” is broadly defined to mean the discharge from any conveyance that is used for collecting and conveying storm water at an industrial plant. 40 C.F.R. § 122.26(b)(14). Facilities involved in the manufacturing of finished articles made entirely or mainly of wood materials, including facilities classified under Standard Industrial Classification (SIC) code 24, are defined as engaging in industrial activity. 40 C.F.R. § 122.26(b)(14)(ii).

3.10. On June 4, 2015, EPA issued the National Pollutant Discharge Elimination System (“NPDES”) general permit for stormwater discharges associated with industrial activity (“2015 MSGP”). 80 Fed. Reg. 34403. The 2015 MSGP was administratively continued and expired on June 3, 2020. On March 1, 2021, the 2021 MSGP became effective. 86 Fed. Reg. 10269.

3.11. Coverage under the MSGP is available for operators of stormwater discharges associated with industrial activity located in an area where EPA is the permitting authority.

3.12. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation in a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

General Allegations

3.13. Respondent is a general business corporation organized under the laws of Idaho, and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.14. Respondent owns and/or operates an eight-acre sawmill and timber manufacturing facility, located at 2040 Airport Road in Council, Idaho (“Facility”). The primary operations at the Facility include sanding, re-sawing, and planing of lumber, which is categorized under Standard Industrial Classification code 2421 (General Sawmills and Planing Mills).

3.15. On May 3, 2019, Complainant’s Inspector conducted an unannounced inspection of the Facility to assess Respondent’s compliance with the CWA.

3.16. During the inspection, Complainant’s Inspector identified three stormwater inlets that collect stormwater from areas associated with industrial activity on the north portion of the Facility and discharge into Grossen Creek. A stormwater basin that collects stormwater from areas associated with industrial activity on the south portion of the Facility discharges to an unnamed borrow ditch on the western border of the Facility, which flows into Grossen Creek.

The stormwater inlets and the stormwater basin are “point sources” as defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.17. Grossen Creek is a relatively permanent tributary of the Weiser River, which flows into the Snake River. The Snake River is a traditionally navigable water that is used in interstate commerce. Grossen Creek is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.18. Respondent discharged stormwater associated with industrial activity from the Facility into waters of the United States, within the meaning of Section 402(p) and 502(7) of the CWA, 33 U.S.C. §§ 1342(p) and 1362(7), and as defined at 40 C.F.R. § 122.26(a)(14).

3.19. Since it began operations at the Facility, Respondent’s discharges of stormwater were not authorized by the MSGP or any permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.20. At the time of the inspection, Respondent completed a wood treatment process, by which employees burned the surface of dimensional lumber as a means to preserve and finish wood products. The burning process was immediately followed by a water mist over the burnt surface. Resulting wastewater flowed into a storm drain inlet, which discharged into Grossen Creek.

3.21. Wastewater from the wood treatment process is a “pollutant” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.22. The storm drain inlet is a “point source,” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.23. The discharge described in Paragraph 3.20 is a “discharge of pollutants,” as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

3.24. The discharge described in Paragraph 3.20 was not authorized by a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Violations

3.25. As described below, Respondent violated CWA Section 301, 33 U.S.C. § 1311.

Violation 1 – Unauthorized Discharge of Stormwater

3.26. Paragraphs 3.1 through 3.25 are realleged and incorporated herein by reference.

3.27. From at least June 2016 to May 2021, Respondent discharged stormwater associated with industrial activity from the Council Facility into Grossen Creek without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.28. Violations of CWA Section 301(a) are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 2 – Unauthorized Discharge of Wastewater

3.29. Paragraphs 3.1 through 3.25 are realleged and incorporated herein by reference.

3.30. On at least May 3, 2019, Respondent discharged wastewater into Grossen Creek without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a).

3.31. Violations of CWA section 301(a) 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), 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 violation, 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 \$135,400.

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, MO 63197-9000

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

4.6. 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, WA 98101
R10_RHC@epa.gov

Ray Andrews
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Andrews.Raymond@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.

4.7.1. 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 set forth in Part V, 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.

4.7.2. 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 expenses incurred under Paragraph 4.7, above, 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 he or she is 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.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. 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.


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

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

11/11/2021

FOR RESPONDENT:



ANDREW DAVIS
Western Timber Products, Inc.

DATED:

FOR COMPLAINANT:

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

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FINAL ORDER

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

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10