

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

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
The Boeing Company) Docket No. CWA-07-2013-0021
)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
Respondent)
)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

1. The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(a), and as delegated by the Administrator to the Regional Administrator of EPA, Region 7, and further delegated to the Director of the Water, Wetlands, and Pesticides Division in EPA Region 7.

2. The Boeing Company (Respondent) owns and operates a combat aircraft assembly and testing facility located at 6200 James S. McDonnell Boulevard, St. Louis, Missouri, 63134.

STATUTORY AUTHORITY

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, 33 U.S.C. § 1342, 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 stormwater. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

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

7. 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.

8. The regulations at 40 C.F.R. §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity, including discharges from facilities with industrial classifications encompassing the manufacture of aircraft.

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, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. MDNR issued Respondent an Individual Permit for the discharge of stormwater under the NPDES Permit No. MO-0004782. This permit became effective on March 6, 2009, and expires on March 5, 2014.

FINDINGS

11. Respondent is a corporation organized and operating under the laws of Missouri and is a “person” for purposes of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent’s facility was engaged in outdoor activities that include storage and/or use of chemicals, industrial materials and byproducts, hydraulic equipment, petroleum product containers, and deicing materials. Stormwater that comes into contact with these materials contains “pollutants” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

13. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s facility through seven outfalls authorized by Respondent’s NPDES permit. As such, Respondent’s facility constitutes a “point source” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. Outfalls 006, 007, 010, 012, 013, 014, and 015 at Respondent’s facility discharge into unnamed tributaries to Coldwater Creek. Coldwater Creek is a “navigable water” and a “water of the United States” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and its implementing regulation at 40 C.F.R. § 122.2.

15. Respondent’s NPDES permit requires Respondent to meet the following conditions:

- a. Part A, Interim Effluent Limitations and Monitoring Requirements, requires Respondent to collect samples on a quarterly basis and to measure

pollutant concentrations that must meet effluent limits for Chemical Oxygen Demand (COD) at Outfalls 007 and 010 from the date of permit issuance through March 5, 2012.

b. Part B, Final Effluent Limitations and Monitoring Requirements, requires Respondent to collect samples on a quarterly basis and to measure pollutant concentrations that must meet effluent limits for Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), Oil and Grease (O&G), Total Recoverable Copper (CuT), and Total Residual Chlorine (TRC) at Outfalls 006, 007, 010, 012, 013, 014, and 015.

c. Standard Conditions, Section A, Paragraph 4 of the permit requires Respondent to utilize testing procedures in accordance with Missouri Clean Water Commission Effluent Regulations. These regulations require TRC to be analyzed immediately upon collection of the sample.

16. Between August 7 and 8, 2012, an EPA inspector performed an inspection of Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. §1318(a). The purpose of the inspection was to evaluate Respondent's compliance with the CWA.

17. Records obtained and reviewed by EPA reveal the following violations of Respondent's NPDES permit:

a. Effluent Violations: Respondent has failed to meet NPDES permit limits, as required by Parts A and B, Interim and Final Effluent Limitations. These include at least fifty (50) violations for the following pollutants since April 2009: COD, TSS, O&G, and CuT, as identified in the following tables:

COD – Daily maximum 45 milligrams per Liter (mg/L), Monthly average 30mg/L, based on a quarterly grab sample.

Monitoring Period	Outfalls and Exceedances
April-June 2009	014 – 43mg/L (Mo. Ave)
July-September 2009	014 – 558mg/L (Daily Max and Mo. Ave)
October-December 2009	006 – 74mg/L (Daily Max), 006 – 40.5mg/L (Mo. Ave), 015 – 54mg/L (Daily Max), 015 – 32mg/L (Mo. Ave)
January-March 2010	012 – 46mg/L (Daily Max and Mo. Ave)
January-March 2011	012 – 45mg/L (Mo. Ave), 013 – 42.5mg/L (Mo. Ave), 015 – 39.5mg/L (Mo. Ave)
July-September 2011	006 – 73mg/L (Daily Max and Mo. Ave), 007 – 81mg/L high flow stormwater (Daily Max and Mo. Ave), 010 – 34mg/L base flow (Mo. Ave), 013 – 86mg/L (Daily Max and Mo. Ave), 015 – 149mg/L (Daily Max and Mo. Ave)
January-March 2012	010 – 89mg/L high flow stormwater (Daily Max and Mo. Ave), 013 – 48mg/L (Daily Max and Mo. Ave), 015 – 31.5mg/L (Mo. Ave)
April-June 2012	006 – 51mg/L (Daily Max and Mo. Ave), 010 – 60mg/L high flow stormwater (Daily Max and Mo. Ave)
July-September 2012	006 – 101mg/L (Daily Max), 006 – 56mg/L (Mo. Ave), 007 – 66mg/L base flow (Daily Max), 007 – 48.5mg/L base flow (Mo. Ave), 007 – 32.3mg/L high flow stormwater (Mo. Ave), 010 – 72mg/L high-flow stormwater (Daily Max), 010 – 48mg/L high flow stormwater (Mo. Ave)

TSS – Daily maximum 100mg/L, Monthly average 50mg/L, based on a quarterly grab sample.

Monitoring Period	Outfalls and Exceedances
April-June 2009	006 – 212mg/L (Daily Max and Mo. Ave), 015 – 162mg/L (Daily Max and Mo. Ave)
July-September 2009	006 – 71mg/L (Mo. Ave), 014 – 78mg/L (Mo. Ave)
October-December 2010	015 – 88mg/L (Mo. Ave)
January-March 2011	012 – 105mg/L (Daily Max and Mo. Ave)
July-September 2011	015 – 78mg/L (Mo. Ave)

O&G – Daily maximum 15mg/L, Monthly average 10mg/L, based on a quarterly grab sample

Monitoring Period	Outfalls and Exceedances
July-September 2009	014 – 39mg/L (Daily Max and Mo. Ave)

CuT – Daily maximum 17.1 micrograms per Liter (ug/L), Monthly average 8.5ug/L, based on a quarterly grab sample

Monitoring Period	Outfalls and Exceedances
April-June 2012	010 – 9740ug/L (Daily Max and Mo. Ave)

b. Monitoring and Reporting Violations: Respondent has collected and analyzed two sets of samples for TRC, one of which was analyzed immediately on-site upon collection and the other analyzed off-site after being transported. Respondent reported monitoring results to MDNR that correspond to samples analyzed off-site. Therefore, Respondent failed to report monitoring results for samples analyzed immediately upon collection.

18. Respondent's failure to comply with the effluent limit requirements of Parts A and B of its permit and failure to report on-site results of TRC monitoring pursuant to the Standard Conditions of its permit are violations of its NPDES permit and, therefore, violations of Sections 301 and 402 of the CWA

19. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, and considering further that Respondent may undertake to modify its deicing practices and to develop and implement a Storm Water Pollution Prevention Plan in order to comply with the requirements of its permit, EPA finds that 60 days is a reasonable time for Respondent to comply with the aforementioned permit and regulatory requirements.

ORDER

Based on the above-referenced Findings and pursuant to the authority of Section 309(a)(3) of the Act, IT IS HEREBY ORDERED:

20. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA.

21. Within 60 days of receipt of this Order, Respondent shall provide to EPA a detailed Work Plan, subject to EPA review and comment, describing Respondent's plans to eliminate the underlying cause, and prevent recurrence, of the above-referenced effluent violations. The Work Plan shall be sent to:

Michael Boeglin, Compliance Officer (or successor)
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

22. The above-referenced Work Plan shall be incorporated into the terms of this Order.

GENERAL PROVISIONS

23. 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.

24. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal action to seek civil penalties, fines, or other appropriate relief under the Act for the violations set forth in the Findings.

25. Issuance of this Order does not affect EPA's authority to seek information under Section 308 of the Act, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce Respondent's permit or enforce or implement the CWA.

26. Failure to comply with the terms of this Order may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day 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 Eastern District of Missouri may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent has 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 Respondent's violations, its economic benefit (if any) resulting from the violations, any history it may have of such violations, any good faith efforts it has made to comply with legal requirements, the economic impact a penalty may have upon it, 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.

Access and Requests for Information

27. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property owned or 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

28. 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

29. This Order shall apply to and be binding upon the Respondent, his 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.

Opportunity to Confer

30. This Order shall become effective 30 days after receipt by Respondent. Prior to the effective date, 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 Respondent. Within ten days of receipt of this Order, Respondent may request in writing a conference regarding the Order or to submit information to 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

31. The terms of this Order shall be effective and enforceable against Respondent upon 30 days of receipt of the Order.

Dated this 20th day of February

Signed: Karen A. Flournoy
Karen A. Flournoy
Director

Chris Muehlberger
Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel