

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2015-0025
David Cozad)	
Michael Schumacher)	
Brad Peterson)	
)	
d/b/a Credit Island Recycling)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	
Proceedings under Section 309(a) of the)	
Clean Water Act, 33 U.S.C. § 1319(a))	

Preliminary Statement

1. This Administrative Order for Compliance (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.
2. Respondents in this case are David Cozad, Michael Schumacher, and Brad Peterson, d/b/a Credit Island Recycling (“Respondents”).

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 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.

Stormwater

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 requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.
6. 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.
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. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified as Standard Industrial Classification 5093 (Scrap and Waste Materials).
9. The Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.
10. IDNR issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity. The most recent 5-year permit has an effective date of October 1, 2012, and an expiration date of October 1, 2017.
11. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent (NOI) to IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1 of the General Permit, a Stormwater Pollution Prevention Plan (SWPPP), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site before the NOI is submitted to IDNR and fully implemented concurrently with operations at the facility.

Factual Background

12. Respondents were and at all times relevant to this action the owner and/or operators of a facility known as Credit Island Recycling, located at 2260 West River Drive, Davenport, Iowa 52802 (Facility), operating under SIC code 5093.

13. Stormwater, snow melt, surface drainage and runoff water leave Respondents' facility and discharge to a tributary to the Mississippi River and thereafter to the Mississippi River. The runoff and drainage from Respondents' facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).
14. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
15. The Facility has "stormwater 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. The Mississippi River and the adjacent tributary are each a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
17. Stormwater runoff from Respondents' industrial activity 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. Respondents' discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
19. On January 4, 2013, the IDNR staff performed a compliance investigation of the Facility (IDNR 2013 Investigation), following a citizen's complaint that "a big pile of appliances was at the new scrap yard and that demanufacturing was taking place without a permit". At this time, the facility was informed by IDNR staff that an industrial stormwater permit was required for the Facility.
20. By correspondence dated March 1, 2013, Respondents submitted a Notice of Intent to IDNR which certified a SWPPP had been developed for the facility and that requested coverage by NPDES General Permit No. 1. On March 8, 2013, IDNR issued Permit Authorization No. IA-23124-22882 (hereafter "Permit Authorization"), to Credit Island Recycling on March 8, 2013, for the Facility, through October 1, 2017. This Permit Authorization governs stormwater discharges at the Facility associated with industrial activity.
21. Prior to issuance of the Permit Authorization (March 8, 2013), Respondents owned and/or operated the facility without the required authorization under an industrial stormwater NPDES Permit.
22. On July 30, 2013, October 30, 2013, and November 7, 2013, IDNR staff conducted inspections of the facility, in response to citizen complaints and to determine the facility's

compliance with Iowa's Solid Waste program. During each of these inspections, IDNR documented ongoing scrapping activity at the facility.

23. On May 13, 2014, the EPA performed an inspection of the Facility (EPA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the EPA Inspection was to evaluate the Facility's compliance with the CWA, including its management of industrial stormwater at the Facility. The inspector observed and documented the following physical conditions at the Facility:
 - a. a tributary to the Mississippi River is located directly adjacent to the Facility and had discharge points for the discharge of stormwater;
 - b. scrap and recyclable material (metals) and solid waste had been pushed over an earthen berm and a construction fence along the Facility's eastern perimeter and had been pushed, placed, or allowed to fall into a tributary to the Mississippi River;
 - c. the Facility was being maintained in an unclean and unorganized manner and that materials were scattered around the Facility grounds and were stockpiled in an unorganized manner;
 - d. floatable materials were deposited in the tributary to the Mississippi River; and
 - e. a pool of water with an oil sheen was present directly adjacent to a discharge pipe to the tributary to the Mississippi River.
24. During the EPA Inspection, the EPA inspector observed and documented that Respondents had failed to comply with the requirements of the General Permit No. 1, including, but not limited to, the following:
 - a. conducting preventative maintenance of stormwater management devices;
 - b. good housekeeping practices;
 - c. employee training, evaluation and certification for the presence of non-stormwater discharges; and
 - d. conducting visual inspections.
25. Following EPA's inspection, the EPA inspector issued a Notice of Potential Violation (NOPV) to Respondents that identified violations of Respondents' authorization under General Permit No.1, including but not limited to:
 - a. failure to provide a SWPPP;
 - b. failure to document visual self-inspections of stormwater runoff, and
 - c. failure to implement best management practices to prevent recycled materials from entering a waterway.
26. In telephone interviews with representatives of Credit Island Recycling in September 2014, EPA was informed that the Facility did not yet have a SWPPP, and that site

conditions have “gotten worse” and that there are “hundreds of appliances stacked on their sides” and when vehicles are brought in that the “fluids are not drained.”

Findings of Violation

Count 1

Failure to Develop and Implement a SWPPP

27. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.
28. Part III.C. of General Permit No. 1, as authorized and applicable to the Facility, requires that a storm water pollution prevention plan (SWPPP) be developed for the facility covered by the General Permit, and that the SWPPP shall be prepared in accordance with good engineering practices. The plan is required to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility; and to describe and ensure the implementation of practices which will be used to reduce pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Subject facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of the permit.
29. Part III.C.1. of General Permit No. 1, as authorized and applicable to the Facility, requires that the SWPPP shall be completed before the Notice of Intent is submitted to the IDNR. Full implementation of the pollution prevention plan is required to be executed concurrently with operations at the subject facility.
30. Through at least September 2014, Respondents had failed to develop and implement a SWPPP for the Facility, in violation of Part III.C.1 of General Permit No. 1.
31. Respondents' failure to develop and implement a SWPPP is a violation of the terms and conditions of General Permit No. 1, 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 Conduct Visual Inspections

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

33. Part III.C.4.C of General Permit No. 1, as authorized and applicable to the Facility, requires that qualified personnel visually inspect designated equipment and plant area at appropriate intervals specified in the SWPPP, but in no case, not less than once a year.
34. Through at least the date of EPA's Inspection, Respondents had failed to perform inspections at the Facility, in violation of Part III.C.4.C of General Permit No. 1.
35. Respondents' failure to conduct inspections at the Facility are violations of the terms and conditions of General Permit No. 1, 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
Discharges of Non-Stormwater Pollutants

36. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.
37. Part III.A. of General Permit No. 1, as authorized and applicable to the Facility, states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water."
38. The EPA Inspection, referenced in Paragraphs 23 - 25, above, documented discharges of non-stormwater pollutants in violation of the General Permit, including but not limited to, the discharge of recyclable material, petroleum related products, and other debris into the tributary adjacent to the Facility, which flows directly into the Mississippi River.
39. The discharges of non-stormwater pollutants, as observed and documented by EPA's Inspection, are violations of the terms and conditions of General Permit No. 1, as authorized and applicable to the Facility, and are violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and 33 U.S.C. § 1342(p).

Order for Compliance

40. Based on the Factual Background and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the Respondent is hereby ORDERED to take the actions described below.
41. Within thirty (30) days of the Effective Date, as defined in Paragraph 58 herein, Respondents shall commence actions necessary to correct the deficiencies identified in order to eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit, including, but not limited to:

- a. Develop and implement a SWPPP specific to the site conditions of the Facility that meets all applicable requirements of its NPDES permit included in Part III.C of General Permit No.1.
 - b. Conduct visual inspections in accordance with the Permit and as scheduled by the newly developed SWPPP.
 - c. Conduct proper operation and maintenance of the Facility as required by the Permit.
42. Within forty-five (45) days of the effective date of this Order, the Respondent shall submit a written report to provide the following:
- a. A copy of the SWPPP that has been developed for the facility.
 - b. A description of all activities initiated to date to achieve compliance with the current NPDES Permit conditions.
43. In the event that Respondents believe that correction of the violations cited herein are not possible within 30 days of the effective date of this Order, Respondents shall include in its written report to be submitted pursuant to Paragraph 42, above, a comprehensive written Plan for the correction of any remaining violations. This Plan shall describe in detail, the corrective actions to be taken and why such actions are sufficient to correct the remaining 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.
44. If applicable, the EPA will review the Plan and Schedule submitted by Respondents pursuant to Paragraph 43. The EPA shall approve the Schedule or require modification and resubmission of a portion or all of the Plan and/or Schedule pursuant to Paragraph 45, below. Upon approval, the Schedule shall be deemed incorporated into and become enforceable under this Order. Review and comment on the Plan and approval of the Schedule by the EPA does not relieve Respondents of the responsibility to comply with its NPDES Permit, the CWA, applicable State law, or this Order.
45. If required by the EPA pursuant to Paragraph 44, above, Respondents shall within 45 days of receipt of any written comments from EPA regarding the Plan and/or Schedule, to make modifications and changes to it as directed by EPA, and resubmit the Plan and/or Schedule to the EPA. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

Certification

46. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement signed by a named Respondent, or by a duly authorized representative of that person, as described at 40 C.F.R. § 122.22, that contains the following certification:

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.

Submissions

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

Lantz Tipton, or his designated successor
Compliance Officer (WENF)
Water Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

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

Deborah Quade, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623.

49. In the event Respondents fail to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order against the Respondents and/or seek additional penalties against Respondents for such noncompliance with the terms of this Order.

General Provisions

Effect of Compliance with the Terms of this Order

50. Compliance with the terms of this Order shall not relieve the Respondents 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.
51. 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. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 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 CWA for any violation whatsoever.

Access and Requests for Information

52. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect the Respondents' facility, and/or to request additional information from any Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

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

Parties Bound

54. This Order shall apply to and be binding upon the Respondents, their agents, successors and assigns. Respondents 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

55. 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 CWA, 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 Iowa 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 CWA and for any violations of this Order.

Judicial Review

56. Respondents have 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

57. Respondents have 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, Respondents may request a conference regarding the Order or to submit information to the EPA. If Respondents request 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

58. The terms of this Order shall be effective and enforceable against Respondents 30 days after receipt of an executed copy of the Order.

Termination

59. 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.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

12-17-14
Date:



Howard Bunch
Assistant Regional Counsel
Office of Regional Counsel

12-17-14
Date:

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 Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

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:

David Cozad, Michael Schumacher and/or Brad Peterson
(d/b/a Credit Island Recycling)
2260 West River Drive
Davenport, Iowa 52802

Michael Schumacher and/or Brad Peterson
1925 West 36th Street,
Davenport, Iowa 52802

David Cozad
2272 West River Drive
Davenport, Iowa 52802

and by first class mail to:

Ted Peterson, Supervisor
IDNR Field Office #5
502 East 9th Street
Des Moines, Iowa 50319

Deborah Quade, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

12/18/14
Date

Anna M. Rod Dody
Signature