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EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SIERRA PACIFIC INDUSTRIES,
Mount Vernon, Washington,

Respondent.

DOCKET NO. CWA-10-2017-0049

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) 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 Sierra Pacific Industries ("Respondent") agrees to the 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), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 309(g) of the CWA,

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.1.1. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

3.1.2. The CWA defines a “pollutant” to include, *inter alia*, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

3.1.3. The CWA defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure . . . from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.1.4. Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all impoundments and tributaries to those waters. 40 C.F.R. § 122.2.

3.2. A NPDES permit is required for any stormwater “discharge associated with industrial activity.” CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(a)(1)(ii).

3.2.1. The CWA specifies that stormwater discharge “associated with industrial activity” (industrial stormwater) includes the discharge from any conveyance which is used for collecting and processing or raw materials storage areas at an industrial plant. Industrial stormwater is a type of pollutant. CWA § 402(p), 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a)(1)(ii), (b)(14).

Factual Background

3.3. Respondent is a corporation organized under the laws of the State of California, and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.4. Respondent owns and operates a sawmill facility (“Facility”), located at 14353 McFarland Road in Mount Vernon, Washington. The Facility primarily processes Douglas Fir and Hemlock forest products.

3.5. Two drainage areas at the Facility route stormwater to two outfalls (“DP1” and “DP2”) that discharge into Indian Slough. The majority of discharge from the Facility is stormwater resulting from precipitation that falls within the Facility’s footprint.

3.6. The Facility’s primary drainage channel routes drainage north to a stormwater detention pond. Stormwater entering this pond then flows directly south via an underground pipeline to Indian Slough at discharge point DP1.

3.7. The Facility’s secondary drainage channel is located in the southern portion of the Facility and runs along a portion of the nearby McFarland Road. This is the main entrance road to the Facility that maintains truck, forklift, and employee vehicle traffic. This drainage channel collects stormwater runoff from both the Facility and a portion of McFarland Road and routes

this drainage to Indian Slough at discharge point DP2.

3.8. Indian Slough is a non-navigable tributary of Padilla Bay. Padilla Bay is a navigable water body that is part of Puget Sound. Indian Slough, Padilla Bay, and Puget Sound are “waters of the United States,” and are subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

3.9. Because DP1 and DP2 discharge into “waters of the United States,” each are “point sources” under the CWA. CWA § 502(14), 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.

3.10. At all times relevant to this Consent Agreement, Respondent was authorized to discharge industrial stormwater that conformed to the requirements of the Industrial Stormwater General Permit (“ISGP”) number WAR007765, issued by the Washington State Department of Ecology (“Ecology”) on October 21, 2009, which became effective on January 1, 2010. The ISGP was administratively extended on December 3, 2014. That extension became effective on January 2, 2015.

3.11. In Ecology’s Permit and Reporting Information System, the Facility is titled “Burlington Lumber Facility.”

3.12. EPA conducted a partial inspection of the Facility on September 4, 2015, and returned on September 14, 2015 to complete the inspection (collectively, the “Inspection”). The purpose of the Inspection was to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26, and the ISGP.

Stormwater Pollution Prevention Plan and Best Management Practices

3.13. Section S3. of the ISGP requires all permittees covered by the ISGP to prepare and maintain a Stormwater Pollution Prevention Plan (“SWPPP”).

3.14. In compliance with Section S3. of the ISGP, Respondent completed a SWPPP for the facility in 2006 and revised the SWPPP as recently as 2014.

3.15. Condition S3.B. of the ISGP establishes minimum SWPPP requirements that include Best Management Practices (“BMPs”) to eliminate or reduce the potential to contaminate stormwater and to prevent violations of water quality standards.

3.16. Condition S3.B.4.b. requires all permittees to implement certain BMPs and to include those BMPs in the permittee’s SWPPP. A permittee may omit a BMP only if it clearly justifies each BMP omission in its SWPPP based upon site conditions rendering the BMP unnecessary or infeasible, or because the Permittee provide alternative, equally effective BMPs.

Count 1

3.17. Condition S10.C. of the ISGP requires permittees to install and maintain BMPs in accordance with the SWPPP.

3.18. Condition S3.B.4.b.ii.2. of the ISGP states that, in implementing proper BMPs, permittees shall use grading, berming, or curbing to minimize or prevent exposure of stormwater runoff to manufacturing, processing, and material storage areas.

3.19. At the time of the Inspection, Respondent had not implemented effective BMPs in and around the Facility’s chip loading area. As a result, chip debris were observed dispersed in an area directly adjacent to one of the Facility’s primary drainage pathways, which discharges via DP2 into Indian Slough.

3.20. **Violation:** Respondent violated Condition S3.B.4.b.ii.2. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to use and maintain grading, berming, or curbing to minimize exposure of runoff to chip debris in an area located adjacent to a drainage pathway.

Sampling and Reporting

3.21. Section S4. of the ISGP establishes stormwater sampling requirements for all permittees. Condition S4.B.1.d. of the ISGP states that “[t]he Permittee shall obtain representative samples . . . ,” and a “representative sample” is defined in the ISGP as “a sample of the discharge that accurately characterizes stormwater runoff generated in the designated drainage of the facility.”

3.22. Condition S9. of the ISGP establishes reporting, recordkeeping and record retention requirements. Condition S9.A requires all permittees to prepare and submit Discharge Monitoring Reports (“DMRs”) on a quarterly basis, which report the stormwater sampling data obtained during each applicable reporting period. Condition S9.B requires permittees to prepare annual reports of any corrective actions that were evaluated or implemented during that calendar year, and to submit those annual reports by May 15 of the following calendar year.

Counts 2 – 7

3.23. Respondent was required to sample and analyze its stormwater discharges for turbidity, pH, copper, zinc, chemical oxygen demand, and total suspended solids, and to inspect its stormwater discharges for visible oil sheen. ISGP Conditions S5.A and S5.B.

3.24. Condition S9.A.1. requires permittees to report sampling data obtained during each reporting period on a DMR.

3.25. At the time of Inspection, Respondent supplied inspectors with a copy of its DMR for the reporting period falling within the second quarter of 2012 (“Q2 2012 DMR”) as well as supporting laboratory documentation for the information contained in the DMR.

3.26. The laboratory documentation underlying the Q2 2012 DMR reflected zinc values of .057 mg/L and 1.463 mg/L for DP1 and DP2, respectively.

3.27. Respondent submitted the Q2 2012 DMR to Ecology with zinc values of .057 µg/L and 1.463 µg/L for DP1 and DP2, respectively.

3.28. One milligram per liter (mg/L) is the same concentration as one thousand micrograms per liter (µg/L). The zinc concentrations reported by Respondent for each outfall were therefore one thousand times lower than the zinc concentrations reported by the laboratory to Respondent.

3.29. Upon request, Respondent provided DMRs for the remaining reporting periods in 2012. The DMRs for the first and fourth quarters of 2012 contain the same inaccurate reporting of zinc concentrations for both outfalls in units of µg/L rather than mg/L. Respondent's DMR for the third quarter of 2012 reflects no discharge.

3.30. In total, Respondent inaccurately reported zinc concentrations for six separate samples in its 2012 DMRs.

3.31. Respondent's DMRs began reporting correct unit values in the first quarter of 2013.

3.32. **Violation:** Respondent violated Condition S9.A.1 of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent submitted DMRs to Ecology that failed to accurately report zinc concentrations in six separate stormwater samples in its 2012 DMRs.

Level One Corrective Action

3.33. Condition S8.B. of the ISGP states that "Permittees that exceed any applicable benchmark value(s) . . . for any quarter shall complete a Level 1 Corrective Action for each parameter exceeded"

3.34. As part of the corrective action, the permittee must "Summarize the Level 1 Corrective Actions in the Annual Report," as required by Condition S8.B.2. of the ISGP.

Counts 8 – 9

3.35. The Facility's zinc concentration benchmark for its Q2 2012 DMR was 117 µg/L.

3.36. Respondent's Q1 2012 DMR reflects a zinc concentration for DP1 of .91 µg/L.

As explained above in relation to Counts 2 – 7, the actual zinc concentration of that sample as reflected by laboratory documentation for the Q2 2012 DMR was 910 µg/L. This concentration exceeds the 117 µg/L benchmark.

3.37. Respondent's Q2 2012 DMR reflects a zinc concentration for DP2 of 1.463 µg/L.

As explained above in relation to Counts 2 – 7, the actual zinc concentration of that sample as reflected by laboratory documentation for the Q2 2012 DMR was 1,463 µg/L. This concentration exceeds the 117 µg/L benchmark.

3.38. Respondent did not conduct a Level 1 Corrective Action for these exceedances.

3.39. **Violation:** Respondent violated Condition S8.B. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to complete a Level 1 Corrective Action for the two benchmark exceedances measured in 2012.

IV. TERMS OF SETTLEMENT

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

4.2. **Penalty:** Pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$28,000.

4.3. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.2 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4. 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.

4.5. Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Young.Teresa@epa.gov

Chae Park, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Park.Chae@epa.gov

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

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: Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.7.2. Attorney's Fees, Collection Costs, Nonpayment Penalty: Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.2, Respondent shall pay (in addition to any assessed penalty and interest) attorney's 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 4.2, including any additional costs incurred under Paragraph 4.7, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

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 the terms and conditions of this document.

4.10. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth therein.

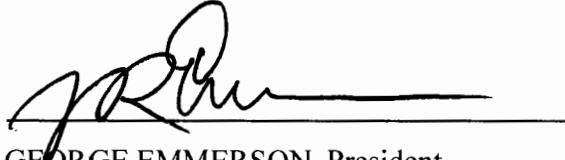
4.11. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

3/17/17

FOR RESPONDENT:

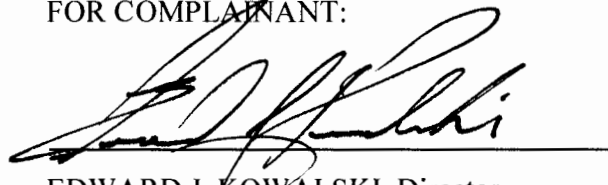


GEORGE EMMERSON, President
Sierra Pacific Industries

DATED:

3/30/2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SIERRA PACIFIC INDUSTRIES,
Mount Vernon, Washington,

Respondent.

DOCKET NO. CWA-10-2017-0049

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. 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.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the 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.


1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–708.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington State Department of Environmental Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

1.6. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 5th day of April, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Sierra Pacific Industries, DOCKET NO.: CWA-10-0049**, was filed with the Regional Hearing Clerk on Date.

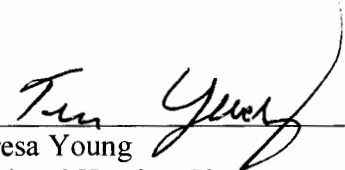
On Date, the undersigned certifies that a true and correct copy of the document was delivered to:

William M. McLaren
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on Date, to:

George Emmerson
President
Sierra Pacific Industries
P.O. Box 496028
Redding, CA 96049-6028

DATED this 5 day of April 2017.



Teresa Young
Regional Hearing Clerk
EPA Region 10