

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
DR Property LLC) Docket No. CWA-07-2015-0071
Wamego, Kansas)
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE ON
) CONSENT
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order”) are made and issued pursuant to 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 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is DR Property LLC, in Wamego, Kansas (“Respondent”), a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent is the owner and/or operator of Wamego Recycling, an auto salvage facility located at 18070 US Highway 24 in Wamego, Kansas 66547.

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2)

agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System permit.

7. 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 CWA, 33 U.S.C. § 1362.

8. Section 402(p) of 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 CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of CWA.

9. 40 C.F.R. § 122.26(b)(14) defines a stormwater discharge that is “associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 5093, which includes establishments primarily engaged scrap and waste material recovery including battery reclaimers, salvage yards, and automobile recyclers. *See* 40 C.F.R. § 122.26(b)(14)(vi).

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

11. 40 C.F.R. §§ 122.26(a)(1)(ii), 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.

12. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of CWA. EPA maintains concurrent enforcement authority with authorized states for violations of CWA.

13. On September 1, 2006, KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) for the discharge of stormwater under the NPDES. The General Permit governs stormwater discharges associated with industrial activity, addressing categories of facilities generally involved in materials handling, manufacturing, transportation, or production. KDHE reissued the General Permit in 2011, which is effective from November 1, 2011, through October 31, 2016. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention (“SWP2”) Plan.

FACTUAL BACKGROUND

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

15. At all times relevant to this action, Respondent was the owner and operator of an auto salvage facility (“Site”), comprised of approximately six acres, and located at 18070 US Highway 24 in Wamego, Kansas 66547.

16. The Site is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of CWA, 33 U.S.C. § 1362.

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

18. Stormwater contains “pollutants” as defined by Section 502(6) of CWA, 33 U.S.C. § 1362(6).

19. 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 CWA, 33 U.S.C. § 1342.

20. KDHE issued NPDES Permit No. KS-R000421 to Respondent on December 18, 2007. KDHE re-issued the NPDES permit on November 1, 2011, and it will expire on October 31, 2016. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Site.

21. On December 17-18, 2014, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a) inspected the Site to determine Respondent’s compliance with its NPDES permit and the CWA.

FINDINGS OF VIOLATION

Count 1

Failure to Develop a Stormwater Pollution Prevention Plan

22. The facts stated in Paragraphs 14 through 21 above are herein incorporated.

23. Section 2.1 of Respondent's NPDES permit states Respondent shall develop a stormwater pollution prevention plan that is specific to the industrial activity and site characteristics occurring at the permitted location described in the Notice of Intent ("NOI"). The Respondent shall fully implement and periodically review, and update as necessary, the provisions of their SWP2 Plan, as required under this part, as a condition of this general permit. The Respondent shall develop and implement a SWP2 Plan within ten months of KDHE's authorization of the Respondent's Notice of Intent form.

24. The EPA inspection referenced in Paragraph 21 found that Respondent had not developed and implemented a SWP2 plan at the time of the inspection. Respondent was unfamiliar with SWP2 plans and had never developed or updated a plan despite annually certifying on permit renewals that SWP2 plans were updated.

25. Respondent's alleged failure to develop an adequate SWP2 plan is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Properly Operate and Maintain the Facility

26. The facts stated in Paragraphs 14 through 21 above are herein incorporated.

27. Section 4.1 of the Standard Conditions of Respondent's NPDES permit states that the Respondent shall at all times properly operate and maintain all facilities.

28. During the EPA inspection referenced in Paragraph 21, the inspector observed a significant quantity of loose parts and buried salvage materials, used batteries stored uncovered and exposed, dark oil stains on the ground, and used oil barrel and other fluid barrels unprotected and without secondary containment. These observed conditions resulted from Respondent's failure to properly operate and maintain the facility.

29. Respondent's alleged failure to properly operate and maintain the facility is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 3

Failure to Implement a Storm Water Pollution Prevention Plan

30. The facts stated in Paragraphs 14 through 21 above are herein incorporated.

31. Section 2.2 of the of Respondent's NPDES permit states that the Respondent shall implement a SWP2 plan to review, evaluate, select, install, utilize, operate and maintain BMPs in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility. At a minimum, Respondent's plan for BMPs shall contain a listing and description of managerial/administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility, including a schedule, if necessary, for implementing such controls.

32. During the EPA inspection referenced in Paragraph 21, the inspector did not observe any structural or non-structural BMPs utilized by the facility to minimize or control the ability of pollutants to join stormwater, as required by Section 2.2. of Respondent's NPDES permit.

33. Respondent's alleged failure to implement an adequate SWP2 plan is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 4

Failure to Perform Self-Site Inspections

34. The facts stated in Paragraphs 14 through 21 above are herein incorporated.

35. Section 2.4.3(d) of Respondent's NPDES permit states that Respondent shall perform inspections of designated areas for equipment and storage for raw material, chemicals, recycling, equipment, paint, fueling and maintenance; and areas for loading, unloading, and waste management at appropriate intervals, but no less than quarterly. The permit also requires that a set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections, with records maintained of inspections and corrective actions.

36. During the EPA inspection referenced in Paragraph 21, the inspector noted the facility had neither conducted nor documented self-site inspections.

37. Respondent's alleged failure to perform self-site inspections is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 5

Failure to Conduct Annual Comprehensive Site Compliance Evaluations

38. The facts stated in Paragraphs 14 through 21 above are herein incorporated.

39. Section 2.4.4 of Respondent's NPDES permit requires comprehensive site compliance evaluations to be conducted at least once a year. Evaluations shall provide for visual inspection of areas contributing to stormwater discharges associated with industrial activity for evidence of, or the potential for, pollutants entering the stormwater drainage system. Evaluations shall also include evaluation of the measures used to reduce pollutant loadings and determine if additional measures are needed. The evaluation shall be recorded in a report summarizing the scope, personnel, and date of the evaluation, and any observations of non-compliances and resolution of non-compliance, or a statement that the facility is in compliance with the conditions of its permit.

40. During the EPA inspection referenced in Paragraph 21, the inspector noted that the facility has never conducted or made records of comprehensive site compliance evaluations.

41. Respondent's alleged failure to conduct annual comprehensive site compliance evaluations is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 6

Failure to Conduct Visual Stormwater Monitoring

42. The facts stated in Paragraphs 14 through 21 above are herein incorporated.

43. Section 2.4.5 of Respondent's NPDES permit states that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

44. During the EPA inspection referenced in Paragraph 21, the inspector noted that the facility has never conducted or made records of a visual examination of stormwater quality.

45. Respondent's alleged failure to conduct visual stormwater monitoring is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Order for Compliance

46. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.

47. 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 violations cited above, and to come into compliance with all of the applicable requirements of its industrial stormwater permit.

48. Within sixty (60) days of the effective date of this Order, Respondent shall provide EPA and KDHE a written description of the actions it has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above. All submitted documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to:

sans.cynthia@epa.gov

Cynthia Sans, or her successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph. All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Mr. Mike Tate, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

49. 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.

50. 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. 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

51. 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

52. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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

53. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

Termination

54. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 21 day of JANUARY, 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, DR Property LLC:


Signature _____ Date 1-17-16
Name Scott Dinger
Title Owner

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 to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, 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:

MR
Scott Dinger, Owner
DR Property LLC
18070 US Highway 24
Wamego, Kansas 66547,

and via first class mail to:

Mr. Mike Tate, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

1/26/15
Date

Kathy Rowmon
Signature