

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED

2011 MAY 24 AM 8:41

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

C & B Recycling,  
a New Mexico Company,

Respondent

Facility No.: NMU001702

§ Docket No. CWA-06-2011-1765  
§  
§  
§ Proceeding to Assess a Class I  
§ Civil Penalty under Section 309(g)  
§ of the Clean Water Act  
§  
§ ADMINISTRATIVE COMPLAINT  
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 ("Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. § 22.50 through 22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. C & B Recycling (“Respondent”) is a company incorporated under the laws of the State of New Mexico, and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this action (“all relevant times”), Respondent owned or operated a scrap metal and recycling facility located at 1702 E. Green Street, in Carlsbad, Eddy County, New Mexico (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with industrial wastewater through the municipal separate storm sewer system into the receiving waters of the Pecos River Basin in Segment 20.6.4.203 NMAC, which is considered a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the

authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Pursuant to Section 402(a) of the Act, EPA issued the Storm Water General Permit for Industrial Activities (73 Fed. Reg. No. 189, 56572-56578, September 29, 2008) ("permit"). The general permit authorized "storm water discharges associated with industrial activity" to "waters of the United States" (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities subject to "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

9. Under 40 C.F.R. § 122.26(b), the following categories of facilities are among those considered to be engaging in "industrial activity" for purposes of Section 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

40 C.F.R. § 122.26(b)(14)(vi):

Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 (used motor vehicle parts) and 5093 (scrap and waste materials);

10. At all relevant times, Respondent owned or operated a scrap metal and recycling facility operated under Standard Industrial Classification ("SIC") code number 5093 (Revised 1987 edition by the Executive Office of the President, Office of Management and Budget). Therefore, the relevant activity at the facility is "industrial activity" within the meaning of Section 402(p) of the Act, and 40 C.F.R. §§ 122.1 and 122.26(b)(14).

11. At all relevant times, the facility was a "point source," as that term is defined at Section 502(14) of the Act, 33 U.S.C. 1362(14), and 40 C.F.R. § 122.2.

12. At all relevant times, Respondent was an "owner" or "operator" of a facility engaged in industrial activity that was a point source subject to discharges of pollutants to waters of the United States, within the meaning of 40 C.F.R. Part 122 and the permit, and Respondent was, therefore, required to obtain NPDES permit coverage at the effective date of the applicable permit and regulations, or upon commencing the subject activities thereafter.

13. The facility began the relevant operations defined as industrial activity on or about September 1995 which continued throughout the time period relevant to this action.

14. According to the EPA database that records all applications for storm water general permit coverage, Respondent did not make timely application to renew its permit

coverage for its activities at the facility, and was not covered by a NPDES permit at the relevant times for the relevant activities.

15. On December 9, 2010, the facility was inspected by the New Mexico Environment Department. As a result, the findings specified in the following paragraphs were made.

16. Respondent did not submit a Notice of Intent (NOI) to renew its storm water permit coverage under the Storm Water General Permit for Industrial Activities (65 Fed. Reg. No. 210, 64746-64880, October 30, 2000). This permit expired October 30, 2005 and was reissued on September 29, 2008 (73 Fed. Reg. No. 189, 56572-56578, September 29, 2008). Respondent failed to make application to renew permit coverage for its facility under the reissued permit. As a result, the facility was found to be discharging pollutants to the Pecos River without an NPDES permit to discharge, in violation of Section 301 of the Clean Water Act. Rainfall data from the area indicates that from January 2006 to December 2010, there have been thirty-one (31) rainfall events of one-half ( $\frac{1}{2}$ ) inch or greater that have caused discharges of pollutants from the facility to a water of the United States.

17. Each day that Respondent conducted the relevant activities and operated the facility without NPDES permit coverage was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

18. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500.

19. EPA has notified the State of New Mexico of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

20. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

21. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of sixteen thousand eight hundred and eighty-six dollars (\$16,886.00).

22. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior

history of such violations, if any, degree of culpability, and such matters as justice may require.

#### IV. Failure to File an Answer

23. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this complaint within thirty (30) days after service of this complaint whether or not Respondent requests a hearing as discussed below.

24. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

25. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

26. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Earle A. "Rusty" Herbert (6RC-EW)  
EPA Houston Lab  
10625 Fallstone Road  
Houston, TX 77099

27. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

28. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

29. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the



requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

30. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

#### VI. Settlement

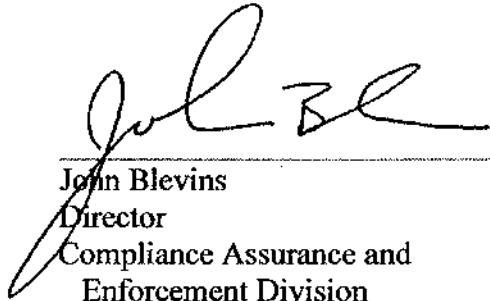
31. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Thea Lomax, of my staff, at (214) 665-8098.

32. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent’s right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such

CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

33. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

5.10.11  
Date

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division


CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Copy by certified mail,  
return receipt requested: Mr. Charles Soules, Owner  
C & B Recycling  
1702 E. Green Street  
Carlsbad, NM 88220

Copy hand-delivered: Mr. Earle A. "Rusty" Herbert (6RC-EW)  
EPA Houston Lab  
10625 Fallstone Road  
Houston, TX 77099

Dated: 3/24/2011 



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

Docket Number: CWA-06-2011-1736, NPDES Facility Number NMU001701

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator delegated the authority to issue this order to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. C & B Recycling ("Respondent") is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to this Order, Respondent owned or operated C & B Recycling, a scrap metal and recycling facility located at 1702 E. Green, in Carlsbad, Eddy County, New Mexico ("facility"), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant to this Order, the facility was a "point source" of a "discharge" of "pollutant[s]" into the receiving waters of the Pecos River Basin in Segment 20.6.4.203 (NMAC), which is considered a "water of the United States" as defined by 40 C.F.R. § 122.2. As a result, Respondent and facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

4. The facility is an industry identified under 40 C.F.R. § 122.6 (b)(14)(vi), operating under Standard Industry Classification (SIC) Code 5093, and is subject to the General Permit for Storm Water Discharges Associated with Industrial Activity ("permit") issued by EPA on September 29, 2008.

5. On December 9, 2010, the facility was inspected by the New Mexico Environment Department ("NMED"). As a result of this inspection, the facility was found to be in violation of Section 301 of the Act, 33 U.S.C. § 1311.

6. The facility began operations defined as industrial activity on or about September 1995, which continued throughout the time period relevant to this action.

7. According to the EPA database that records all applications for storm water general permit coverage, Respondent did not submit a Notice of Intent ("NOI") to renew its permit coverage for its activities at the facility, and was not covered by a NPDES permit at the relevant times, for the

relevant activities. During the time period of January 1, 2006 to December 9, 2010, there were 31 rain events of one-half (½) inch or greater at the facility and also there were no best management practices ("BMPs") installed on-site to prevent unauthorized discharges from the facility.

8. Each day of operation without NPDES permit coverage was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these findings and pursuant to the authority of Section 309(a) of the Act, EPA hereby orders the Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, Respondent shall submit an NOI to the EPA NOI Processing Center for coverage of the facility under the NPDES Permit. The NOI should be submitted by one of the following methods:

1) By regular mail to:  
Storm Water Notice Processing Center  
U.S. EPA, MC 4203M  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

2) By overnight/express mail to:  
Storm Water Notice Processing Center  
U.S. EPA, Room 7420  
1201 Constitution Avenue, NW  
Washington, DC 20004

3) Via the internet at:  
<http://cfpub.epa.gov/npdcs/stormwater/enoi.cfm>

For a status update on your NOI, call the NOI Center at (866) 352-7755.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit to the EPA Region 6 a certified copy of the NOI for coverage under the NPDES Permit that was submitted to the EPA NOI Processing Center.

C. Within thirty (30) days of the effective date of this Order, the Respondent shall develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"), which includes BMPs and is tailored specifically for the C&B B Recycling facility. Respondent shall submit a copy of the

implemented SWPPP to EPA Region 6. Guidance in developing the SWPPP may be found via the internet at: [www.epa.gov/npdes/stormwater/swppp.cfm](http://www.epa.gov/npdes/stormwater/swppp.cfm)

D. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written certification of compliance with this Order to the EPA, Region 6. All correspondence should be addressed to:

Ms. Thea Lomax  
Water Enforcement Branch (6EN-WM)  
EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

GENERAL PROVISIONS

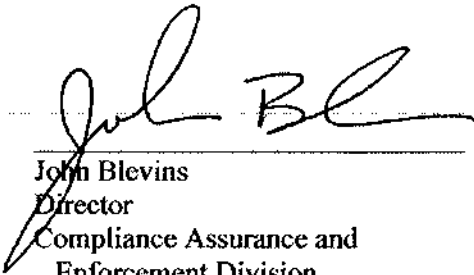
Issuance of this Order shall not be deemed an election by EPA to waive any administrative or judicial, civil or criminal action to seek penalties, fines, or other relief under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligation to comply with all applicable federal, state, or local laws or regulations.

The effective date of this Order is the date it is received by the Respondent.

5.10.11  
Date

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division