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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2015-0051
Phoenix C&D Recycling, Inc.)	
Des Moines, IA)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a))	
of the Clean Water Act,)	
33 U.S.C. § 1319(a))	
_____)	

Preliminary Statement

1. This Administrative Order for Compliance on Consent ("Order on Consent") 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 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, Phoenix C&D Recycling, Inc., ("Respondent" or "Phoenix"), is and was at all relevant times a corporation under the laws of and authorized to conduct business in the State of Iowa.

3. The EPA, together with the Respondent (hereafter collectively referred to as the "Parties") 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 alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order on Consent, 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 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.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order on Consent.

Statutory and Regulatory Framework

7. 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.

8. 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

9. 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.

10. 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.

11. 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.

12. 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).

13. 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.

14. 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, with previous 5-year permits having been issued in 1997, 2002 and 2007. The relevant provisions of each permit, as reissued, are substantially the same.

15. 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, 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.

EPA’s General Allegations

16. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Phoenix C&D Recycling, Inc., located at 4764 Northeast 22nd Street, Des Moines, Iowa 50313 (“Facility”), operating under SIC code 5093.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge to an unnamed tributary to Walfley Creek, then to Walfley Creek, then to the Des Moines River. The tributary flows south approximately 1.2 miles before entering the Polk County municipal separate storm sewer system (MS4). The MS4 becomes subsurface and continues to flow west for approximately 1 mile where it resurfaces. After resurfacing, the tributary flows west for approximately 1.5 miles where it enters the Des Moines River.

18. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

20. 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).

21. The Des Moines River and its tributaries identified in Paragraph 17, above are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. Stormwater runoff from Respondent’s 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).

23. Respondent's 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.

24. After receipt of a NOI from Respondent, dated on or about May 13, 2004, IDNR issued coverage under NPDES General Permit No. 1, Permit Authorization No. IA-7901-7710 (hereafter "Permit"), to Respondent, effective June 24, 2004. Upon Respondent's payment of renewal fees and submission of applications for renewal, IDNR has extended the Permit to Respondent during several permit cycles, with the current Permit being effective from August 23, 2013, through June 24, 2016. The Permit governs stormwater discharges at the Facility associated with industrial activity, including facilities with the SIC Code of 5093.

25. Respondent has operated under the Permit at all times relevant to this Order. At all relevant times related to these proceedings, the provisions of the Permit applicable to Respondent have remained substantially the same.

26. On or about July 14 and 15, 2014, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its Permit and the CWA.

27. During the Inspection, the EPA inspector reviewed Respondent's records related to the Permit and observed the facility and the receiving stream to which stormwater is discharged.

28. At the time of the Inspection, Respondent was unable to provide a copy of its Storm Water Pollution Prevention Plan ("SWPPP") to the EPA inspector.

29. At or near the conclusion of the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation ("NOPV") identifying issues that may be violations of Respondent's Permit, including, but not limited to: failure to develop and implement a SWPPP; failure to install best management practices to minimize construction and demolition scrap material from entering the receiving stream; and failure to conduct annual stormwater inspections. EPA staff also observed the lack of stormwater controls along the perimeter of the receiving stream and near material stockpiles resulting in materials such as plastics, aggregate, sediment, and textiles being deposited into the receiving stream. The inspector documented the flow path from the concrete stockpile which had repeatedly flowed directly into the receiving stream. Uncontrolled leachate was also observed to be originating from a shredded wood pile and flowing to the outfall.

30. On or about December 3, 2014, representatives from the IDNR and the EPA performed a site visit near Respondent's Facility ("Site Visit"). During the Site Visit, the agencies' representatives observed litter in the unnamed tributary to Walfley Creek bordering the eastern perimeter of the facility, piles of processed material on the east and south sides of the processing building, unprocessed construction and demolition material on the north side of that

building, and a flow path of litter from the northeastern section of the Facility into the receiving stream. There was a large pile of broken concrete south of the processing facility.

EPA's Specific Allegations

Count 1

Failure to Develop and Implement a SWPPP

31. The allegations stated in Paragraphs 1 through 30 above are re-alleged and incorporated herein by reference.

32. Part III.C. of Respondent's Permit requires that a storm water pollution prevention plan be developed for each 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 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. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

33. Part III.C.1. of the Permit 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.

34. Respondent submitted its initial NOI to IDNR in May 2004, to receive coverage under General Permit No. 1 and renewed its coverage under the Permit in 2005, 2008 and 2013.

35. Through at least the date of the EPA's July 2014 Inspection, Respondents had failed to develop and implement a SWPPP for the Facility, in violation of Part III.C.1 of its Permit.

36. 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 Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 2

Failure to Conduct Visual Inspections

37. The allegations stated in Paragraphs 1 through 36 above are re-alleged and incorporated herein by reference.

38. Part III.C.4.C. of Respondent's Permit requires that qualified personnel visually inspect designated equipment and plant area at appropriate intervals, but in no case less than once a year.

39. Part III.C.4.C.(3) of Respondent's Permit further requires that the permittee must make and retain for at least three years a written report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP and actions taken following the inspection.

39. Through at least the date of EPA's July 2014 Inspection, Respondents had failed to perform inspections at the Facility, and/or failed to retain copies of reports of any inspections, in violation of its Permit.

40. Respondents' failure to conduct inspections at the Facility, and/or failure to retain copies of inspection reports, 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 1342(p).

**Count 3
Discharges of Non-Stormwater Pollutants**

41. The allegations stated in Paragraphs 1 through 40 above are re-alleged and incorporated herein by reference.

42. Part III.A. of Respondent's Permit states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water."

43. The EPA's Inspection and the joint EPA and IDNR Site Visit referenced above documented discharges of non-stormwater pollutants to waters of the U.S. in violation of Respondent's Permit. The EPA and IDNR documented non-storm water discharges of pollutants from Respondent's Facility to Waters of the U.S., including but not limited to:

- a. litter allowed to enter the unnamed tributary to Walfley Creek bordering the eastern perimeter of the Facility as observed on December 3, 2014 Site Visit;
- b. plastics, aggregate, sediment, and textiles discharged from the concrete stockpile to the unnamed tributary to Walfley Creek as observed during the July 14-15, 2014 Inspection; and
- c. evidence of leachate discharges to the Facility's outfall near the site entrance as observed during the July 14-15, 2014 Inspection and aerial images.

44. Each of Respondent's discharges that was not composed entirely of stormwater is a violation of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Reasonable Time to Achieve Compliance

45. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that sixty (60) days is a reasonable time for Respondent to comply with the terms and conditions of its NPDES Permit, IA-7901-7710.

Order for Compliance

46. Based on the Findings of Fact 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 EPA hereby ORDERS, and Respondent hereby CONSENTS to take, the actions described below.

47. Respondent shall immediately cease the discharge of all non-stormwater pollutants except as specifically authorized by its Permit.

48. Respondent shall take all appropriate action to comply with its Permit and the CWA, 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, document and retain copies of visual inspections in accordance with the Permit and as scheduled by the newly developed SWPPP; and
- c. install appropriate BMPs to prevent the discharge of pollutants and conduct proper operation and maintenance at the Facility as required by the Permit and described in the newly developed SWPPP.

49. By no later than July 1, 2015, 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 copy of a facility inspection report in accordance with the Permit; and
- c. a description of all actions taken to date to achieve compliance with the current NPDES Permit conditions.

50. The EPA may, after review the SWPPP, inspection report, and description of actions taken submitted by the Respondent pursuant to Paragraph 49, provide written comments and suggestions regarding such submittals. Review and comment on the SWPPP or other submissions by the EPA does not relieve Respondents of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

51. If Respondent reasonably believes it is not technically able to complete all actions necessary to construct or install any stormwater control structures required by Paragraphs 48 by the July 1, 2015, reporting deadline, Respondents may submit a written request to the EPA by no later than June 15, 2015, for an extension of time to install such structure(s). The request must include a description of the specific structure(s) for which the extension is being sought, an explanation of the reason for the delay and a date certain by which the structure(s) will be completed.

52. Any decision by EPA regarding a request for an extension of time pursuant to Paragraph 51, above, will be made in writing, and if granted, will set forth the new compliance date for the structure(s) in question. The decision by EPA regarding the extension shall not be subject to appeal; however, EPA will not unreasonably withhold approval.

53. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

Submissions

54. *Reporting to EPA and IDNR:* In addition to the report required by Paragraph 49, above, Respondent shall submit to the EPA, with a copy to the IDNR, semi-annual reports describing the actions it has taken to ensure continued compliance with the terms of its Permit and this Order. These reports are due January 15, 2016, July 15, 2016, and January 15, 2017. Each report shall include, at a minimum:

- a. a description of implementation and/or revision of the SWPPP during the previous six month period;
- b. a description of work and other actions taken to construct the structural controls and/or implement best management controls or mitigation efforts described in Paragraph 49, above, in the previous six month period; and
- c. copies of all relevant documentation regarding the activities described pursuant to subparagraphs a and b.

55. All submissions to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that Phoenix has complied with all the applicable requirements of the Order for Compliance. I also 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.

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

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

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

Ted Petersen, Supervisor
IDNR Field Office #5
7900 Hickman Rd. Suite 200
Windsor Heights, IA 50324

General Provisions

Effect of Compliance with the Terms of this Order

58. Compliance with the terms of this Order shall not relieve the 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.

59. 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

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

Severability

61. If any provision or authority of this Order, or the application of this Order to the Respondent, is held by federal judicial authority to be invalid, the application to the 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

62. This Order shall be effective upon receipt by the Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

63. 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.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this 4th day of May, 2015.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the Respondent, Phoenix C&D Recycling, Inc.:

 4/28/15
Signature Date

Robert J. Colosimo
Name

President
Title

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 Docket 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 on Consent by first class certified mail, return receipt requested, to:

Robert J. Colosimo
Phoenix C&D Recycling, Inc.
4764 NE 22nd Street
Des Moines, IA 50313

and by first class mail to:

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

5/4/15
Date


Signature