

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

IN THE MATTER OF:)
)
) Docket No. CWA-07-2015-0124
)
ST. LOUIS COMPOSTING, INC.)
)
)
Respondent)
)
) FINDINGS OF VIOLATION,
) ADMINISTRATIVE 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” or the “Act”), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.
2. Respondent St. Louis Composting, Inc. (“Respondent”) operates yard waste composting facilities, as described more fully herein.
3. The EPA and 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.
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 Permit (“NPDES”).

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 the CWA, 33 U.S.C. § 1362.

8. 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 comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the 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 stormwater and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant,” including “material handling sites,” “refuse sites,” “sites used for residual treatment, storage or disposal,” and/or “storage areas for raw materials.”

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 Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of CWA. EPA maintains concurrent enforcement authority with authorized states for violations of CWA.

13. Respondent owns all of the stock and is the sole shareholder of Organic Resource Management, Inc. (“ORMI”). MDNR issued ORMI a Missouri General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) for the discharge of stormwater runoff associated with industrial activities from yard waste compost mixing operations at

ORMI's Fort Bellefontaine Compost Facility. The permit was effective December 14, 2012, and will expire on December 13, 2017. The facility's permit, MOG970015 covers stormwater runoff from the facility and contains effluent limits for two outfalls, 001 and 002.

FACTUAL BACKGROUND

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

15. At all times relevant to this action, ORMI was the operator of the Fort Bellefontaine Compost facility ("Site"), which covers approximately 19.36 acres and is located at 13060 County Park Road in Florissant, Missouri 64034. In addition to being the sole owner of ORMI, Respondent also operates the following NPDES-permitted facilities in five other Missouri locations:

NPDES Permit No.	Location
MOG970020	Maryland Heights, MO
MOG970045	St. Louis, MO
MOG970035	Valley Park, MO
MOG970054	Jonesburg, MO
MOG970053 and MOG92008	Pacific, MO

16. This site is a "point source" that "discharges pollutants" into a tributary to Coldwater Creek, a "navigable water" of the United States, as these terms are defined by Section 502 of CWA, 33 U.S.C. § 1362.

17. EPA is authorized to require the owner or operator of any point source to establish and maintain records; make reports; install, use and maintain monitoring equipment; sample effluent; and provide other reasonably required information by Section 308(a) of CWA, 33 U.S.C. § 1318(a).

18. This 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).

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

20. ORMI's discharge of pollutants in stormwater 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.

21. The MDNR issued NPDES general permit No. MOG970015 to ORMI on November 30, 2007, which expired November 29, 2012, and the current NPDES permit effective December 14, 2012, and will expire on December 13, 2017. The NPDES general permit governs ORMI's stormwater discharges that are associated with industrial activity at the Site.

22. On November 18 and 19, 2014, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a) inspected the Site to determine ORMI's compliance with its NPDES stormwater permit and the CWA.

23. On May 18, 2015 the EPA issued a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to further evaluate the Respondent's, and its subsidiary ORMI's, compliance with its NPDES permit and the CWA. The Respondent submitted a timely two-part response received on June 18, 2015, and July 26, 2015.

FINDINGS OF VIOLATION

Count 1: Failure to Maintain Permit Effluent Limits

24. ORMI's NPDES permits establish effluent limitations for Total Suspended Solids ("TSS"), Biochemical Oxygen Demand ("BOD"), and pH, at all outfalls.

25. A review of ORMI's records revealed that ORMI had exceedances of its NPDES permit effluent limits for TSS and BOD between the first quarter of 2011 through the third quarter of 2014 from both outfalls 001 and 002.

26. Respondent's discharges of pollutants in excess of its NPDES permit limits is a violation of its NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Submit and/or Retain Monitoring and Inspection Records

27. Respondent's 2012 NPDES permit requires Respondent to submit Discharge Monitoring Reports ("DMRs") to the MDNR on a quarterly basis, which includes all monitoring and sampling required by its NPDES permit. Respondent's NPDES Permit, Standard Conditions Part 1, Section 7, "Record Retention," also requires Respondent to retain all monitoring records for a period of at least three (3) years.

28. Respondent failed to submit DMRs for the second, third or fourth quarters of 2012 for both outfalls 001 and 002. Respondent also failed to submit DMRs for Outfall 002 for five quarters between 2013 and 2015. A review of records submitted in the information request as well as DMR records provided by MDNR showed that Respondent failed to retain DMRs for 2012.

29. Respondent's failure to submit and/or retain monitoring reports are violations of Respondent's NPDES permit, and as such, are violations of Sections 301(a) and 402(p) CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 3: Failure to Conduct Site Inspections

30. Respondent's 2012 NPDES permit Condition 3(a) requires Respondent to conduct weekly site inspections of "any structures that function to prevent pollution of stormwater or to remove pollutants from stormwater, and of the facility in general to ensure that any BMPs are continually implemented and effective." The inspection reports are to be kept on site with Respondent's SWP2 Plan and maintained for a period of three (3) years.

31. A review of Respondent's records during the EPA inspection and records submitted pursuant to EPA's information request revealed that Respondent failed to conduct weekly site inspections from January 2013 through November 24, 2014.

32. Respondent's failure to conduct weekly site inspections is a violation of Respondent's 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 Submit Annual Reports

33. ORMI is required by the NPDES permit to submit Annual Reports to MDNR "by January 28 of each year for the previous calendar year period." Reports must include "information on quantities and types of all raw materials stockpiled or composted during the year; results of any testing performed; quantity of compost sold, disposed or given away; and the quantity of composting materials on-site at the end of the year."

34. ORMI failed to submit Annual Reports to MDNR for 2011, 2012, and 2013.

35. ORMI's failure to submit annual reports is a violation of its NPDES permits, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Order for Compliance

36. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.

37. **Third-Party Verifier Review and Implementation of Verifier's Recommendations**

a. Respondent shall retain, at its expense, a third-party verifier ("Verifier") to conduct a comprehensive verification of Respondent's compliance with the requirements of this Order set forth in Paragraph 37(d) and the CWA. Respondent shall require that the Verifier act independently and objectively when performing all activities related to assessing the Respondent's compliance with this settlement and the CWA. Respondent shall provide the Verifier with full access to the facilities listed in Paragraph 15, and provide or otherwise make available any necessary personnel and documents to fully perform all verification activities.

b. Respondent has identified SCS Engineers to conduct the verification as set forth in Paragraph 37(d) and certifies by signature of this Order that the SCS Engineers will conduct the verification independent of any influence by Respondent.

c. EPA will notify the Respondent in writing whether it approves of the proposed Verifier. Within 10 days of EPA approval, Respondent shall retain such Verifier to perform the verification activities set forth in Paragraphs 37(d) of this Order. Defendant shall ensure that all verification personnel who conduct or otherwise participate in verification activities shall certify that they satisfy the conditions set forth in paragraph 37(b) above before receiving any payment from Respondent.

If EPA rejects a proposed Verifier, within 30 days of receipt of EPA's notification Respondent shall submit to EPA for approval another proposed Verifier that meets the qualifications set forth in Paragraph 37(b). EPA will review the proposed replacement in accordance with this Paragraph.

d. The Verifier shall perform the following activities that EPA will review to assess Respondent's compliance with the settlement and the CWA.

- i. Assessment of each facility's Stormwater Pollution Prevention Plan to ensure the plan is specific to, and appropriate for, each individual facility;
- ii. Assessment of each facility's installed stormwater best management practices;
- iii. Assessment of each facility's self-inspection reports;
- iv. Assessment of each facility's SWPPP map complete with flow direction, stormwater BMPs, adjacent stormwater MS4 inlets or conveyances, stormwater outfalls, location of the nearest water course, etc.;
- v. Assessment of each facility's training program;
- vi. Assessment of each facility's good housekeeping program;
- vii. Assessment of each facility's sampling program, sampling location, sample collection procedures, etc.;
- viii. Assessment of each facility's material storage areas such as compost areas, fuel distribution areas, etc., and;
- ix. Assessment of any other areas within each facility's footprint that could contribute to a discharge of pollutants.

e. Within six months of the effective date of this Order, the Verifier shall concurrently submit a verification report ("Verification Report") to EPA and Respondent. In addition, the Respondent shall ensure that the Verifier concurrently shares any draft or preliminary findings or reports in any format (electronic or paper) with EPA and Respondent.

- i. The Verification Report shall include all findings and monitoring results of the Verifier.
- ii. The Verifier shall provide copies of all documents reviewed and identify all Facility personnel interviewed in support of the Verification Report.

iii. Respondent shall require the Verifier to include in any Verification Report submitted to EPA pursuant to this Order a certification that the Verifier has remained in compliance with all of the conditions set forth in this paragraph, including that the Verifier conducted the verification independent from any influence by Respondent.

f. The Verification Report, or any information developed or findings of the Verifier, shall not be subject to any privilege or protection, excluding any protections that may be asserted by the Respondent as necessary to protect any Confidential Business Information (CBI) pursuant to the procedures specified by 40 CFR Part 2, Subpart B. In the event Respondent seeks to protect any CBI, Respondent will notify the Verifier of any CBI at the time of the onsite visit to each facility by Verifier.

g. Respondent shall remedy and/or correct all findings identified in the Verification Report as expeditiously as possible or as otherwise agreed to by EPA.

h. Within 30 days of the submission of the Verification Report to Respondent and EPA, Respondent shall submit to EPA a response to all findings set forth in the Verification Report. In the response, Respondent shall describe each completed or proposed action to correct each finding identified in the Verification Report submitted to EPA, including the date(s) that such corrections occurred or are scheduled to occur. The Respondent's response to the Verification Report shall include a timeline of events that have occurred to complete these actions. The timeline must identify the date of starting the assessment, each date each facility was assessed, date of identified finding, date of submission of report to Respondent and EPA, date of corrective actions, date of completion of assessment, etc.

i. Nothing in the Verification Report, including any findings, the observations or assessment by the Verifier, or any subsequent response(s) by Respondent shall be used as an admission against Respondent. However, to the extent that the Verification Report identifies noncompliance with Respondent's NPDES permits or the CWA, or Respondent fails to correct such noncompliance as indicated in Respondent's response to the Verification Report, EPA reserves the right to take action to require correction of the findings and nothing in this Order, including this subparagraph, shall affect EPA's authority under the CWA or other applicable law. EPA shall consider Respondent's agreement to the retention of the Verifier and preparation of the Verification Report and any good-faith efforts to correct such potential findings in determining any potential EPA enforcement response and any potential penalty assessed. Respondent does not admit any liability and reserves all rights and defenses it has with respect to the findings and any underlying facts identified in the Verification Report.

38. Construction of Stormwater Retention Basin - ORMI facility: Within ninety (90) days of the effective date of this Order, Respondent shall have completed building a stormwater retention basin designed to reduce or eliminate stormwater discharges from entering or reaching Coldwater Creek from the ORMI facility.

a. At the completion of the construction activities, and within the 90-day timeframe specified herein, Respondent is responsible for submitting to EPA a Construction Completion Report that includes, at a minimum: as-built specifications of the basin; a plan to update Respondent's NPDES permit and/or SWPPP, if applicable; an explanation of how the basin has been designed to reduce or eliminate stormwater discharges; and a plan for conducting weekly inspections of the basin consistent with the SWPPP and also conducting sampling of the basin outfall for each event a rainfall event causes a discharge to occur from the basin, and reporting sampling results on a quarterly basis to EPA until this Order is terminated.

39. Respondent shall submit to EPA all submittals required under its NPDES permit for the ORMI facility for a period no greater than two (2) years of the effective date of the Order or until written termination of the Order, as described in Paragraph 46.

40. All submitted documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to:

draper.seth@epa.gov

or at:

Seth Draper, or his 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.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

41. 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.

42. 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

43. 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

44. 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

45. 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.

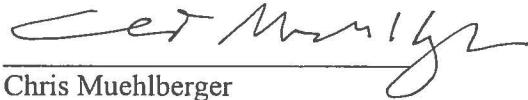
Termination

46. 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 11th day of April, 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, St. Louis Composting, Inc.:


Signature

3/25/2016
Date

Patrick Geraty
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 to the Regional Docket Clerk, U.S. 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:

Rebecca A. Kling, Registered Agent
St. Louis Composting, Inc.
13060 County Park Road
Florissant, Missouri 63034

and via first class mail to:

Paul Dickerson, Chief
Compliance and Enforcement Section
Water Pollution Control Branch
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Dorothy Franklin, Director
St. Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, Missouri 63125

4/11/16
Date

Caral A. Moreno
Signature