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EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kilgore Companies, LLC d/b/a Triple C
Concrete, and a/k/a Twin Falls Redi-Mix

Twin Falls, Idaho,

Respondent.

DOCKET NO. CWA-10-2019-0034

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

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

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000.

Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not

exceed \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See also 83 Fed. Reg. 1190 (Jan. 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) 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 Kilgore Companies, LLC, d/b/a Triple C Concrete and a/k/a Twin Falls Redi-Mix, (“Respondent”) agrees to 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), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. 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).

3.4. 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).

3.5. 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).

3.6. 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)(8); 40 C.F.R. § 122.26(a)(1)(ii).

3.7. 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) and § 122.26(b)(14).

General Allegations

3.8. Respondent is a corporation, incorporated in the State of Delaware and licensed to do business in the State of Idaho, and is therefore a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.9. Respondent’s agent for the purposes of service of process in the State of Idaho is Corporation Service Company, 12550 W Explorer Dr., Ste 100, Boise, ID 83713.

3.10. Respondent owns and operates an integrated ready-mix concrete, aggregate, and pre-cast concrete facility (“Facility”), located at 1097 Addison Avenue West, Twin Falls, Idaho, 83301.

3.11. At all times relevant to this action, Respondent was engaged in industrial activity at the Facility.

3.12. The Facility includes a ready-mix concrete plant, sand and gravel piles, pre-cast concrete manufacturing plant, small shop buildings, equipment storage areas and a gravel surfaced concrete mixer truck parking area.

3.13. Runoff and drainage from the Facility is “storm water,” as defined by 40 C.F.R. § 122.26(b)(13).

3.14. Storm water may contain “pollutants” as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

3.15. At times relevant to this action, the Facility had two stormwater outlets from within the Facility’s footprint: (1) in a graveled roadway; and (2) a truck parking area. Both outlets formerly drained via a pipe that runs under the Facility through the Deadman Gulch area of the nearby Rock Creek Park and into Rock Creek itself. Rock Creek flows to the Snake River and is a tributary of that water. The Facility has since implemented measures to cap these outlets and retain all stormwater onsite.

3.16. The Snake River is a “navigable water” under CWA § 502(7), 33 U.S.C. § 1362(7).

3.17. The CWA § 502(7) defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

Alleged Violations

(Unauthorized Discharge in Violation of 33 U.S.C. § 1311)

3.18. From August 12, 2015, the date that the applicable EPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”) became effective in Idaho, to March 16, 2017, the date that the Facility obtained coverage under the MSGP, the Facility experienced at least seven rainfall events of sufficient volume, accounting for the Facility’s total area, soil, topography, and vegetative cover, to cause stormwater runoff from the Facility to reach Rock Creek.

3.19. At all relevant times, Respondent was not permitted to discharge pollutants from its Facility under the applicable MSGP or any other NPDES permit.

3.20. Respondent has discharged pollutants from a point source into waters of the United States at the Facility without a NPDES permit, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). As such, Respondent has violated CWA Section 301, 33 U.S.C. § 1311.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement. Nothing in this Consent Agreement shall be construed as an admission of liability by Respondent.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$37,200.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. 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.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

In the Matter of: Kilgore Companies, LLC
Docket Number: CWA-10-2019-0034
Consent Agreement
Page 6 of 9

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, ORC-113
Seattle, Washington 98101
(206) 553-1037

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Young.Teresa@epa.gov

Rick Cool
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-201
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
cool.richard@epa.gov

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.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys 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 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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 this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest or raise affirmative defenses to the allegations contained herein and waives any right to appeal the Final Order to be issued accompanying this Consent Agreement.

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

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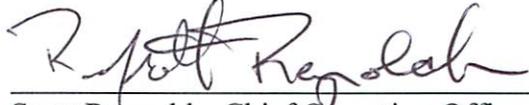
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4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

2-25-19

FOR RESPONDENT:



Scott Reynolds, Chief Operating Officer,
Altaview Concrete (a dba of Kilgore
Companies, LLC)

DATED:

4/12/2019

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kilgore Companies, LLC (d/b/a Triple C
Concrete, and a/k/a Twin Falls Redi-Mix),

Twin Falls, Idaho

Respondent.

DOCKET NO. CWA-10-2019-0034

FINAL ORDER

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
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.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (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.

4. This Final Order shall become effective upon filing.

SO ORDERED this 15th day of April, 2019.

A handwritten signature in blue ink, appearing to read "Richard Mednick", written over a horizontal line.

RICHARD MEDNICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Kilgore Companies, LLC (d/b/a Triple C Concrete, and a/k/a Twin Falls Redi-Mix)**, **DOCKET NO.: CWA-10-2019-0034** was served on the addressees in the following manner on the date specified below:

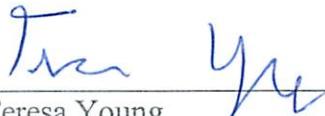
The undersigned certifies that a true and correct copy of the document was delivered to:

William M. McLaren
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
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 to:

Ashley Peck
Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101

DATED this 16 day of April, 2019.



Teresa Young
Regional Hearing Clerk
EPA Region 10