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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

LARRY'S AUTO AND TRUCK PARTS, INC.,
Burlington, Washington,

Respondent.

Docket No. CWA-10-2017-0096

**COMPLAINANT'S RESPONSE TO
ORDER TO SHOW CAUSE**

COMPLAINANT'S RESPONSE

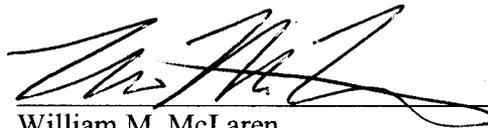
The United States Environmental Protection Agency ("EPA" or "Complainant") respectfully submits this response to the Order to Show Cause ("Order") in this action directing Complainant to submit by August 20, 2017, an explanation for the compliance of Count 2 of the Consent Agreement in this action with 28 U.S.C. § 2462, which provides the statute of limitations for penalty actions such as this one. In the alternative, the Order requires Complainant to resubmit a revised Consent Agreement, omitting Count 2 and setting forth a revised penalty.

In accordance with the Order, Complainant submits as Exhibit A a draft of the revised Consent Agreement with the updated docket number CWA-10-2018-0002. The Consent Agreement omits Claim 2 and includes a corresponding penalty. Because the Consent

Agreement and penalty differ from those originally noticed, Complainant has submitted the revised Consent Agreement for public notice and comment pursuant to 33 U.S.C.

§1319(g)(4)(A). The notice and comment period for the revised Consent Agreement will close in September 2017, after which Complainant will timely submit the signed revised Consent Agreement to the Regional Hearing Clerk for review.

Respectfully Submitted this 14 day of August, 2017.



William M. McLaren
Assistant Regional Counsel
U.S. EPA Region 10
Suite 900, Mail Stop ORC-113
1200 Sixth Avenue
Seattle, Washington 98101

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **RESPONSE TO ORDER TO SHOW CAUSE in In the Matter of: Larry's Auto and Truck Parts, Inc., DOCKET NO.: CWA-10-2017-0096; UPDATED DOCKET NO. CWA-10-2018-0002**, was filed with the Regional Hearing Clerk on the date 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 900
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:

Steven Price
Larry's Auto and Truck Parts, Inc.
199 Pease Road
Burlington, WA 98233

DATED this 14 day of August, 2017.



Teresa Young
Regional Hearing Clerk
EPA Region 10

EXHIBIT A

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

LARRY'S AUTO AND TRUCK PARTS, INC.,
Burlington, Washington,

Respondent.

DOCKET NO. CWA-10-2018-0002

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) 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 Larry's Auto and Truck Parts, Inc. ("Respondent") agrees to the 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), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 309(g) of the CWA,

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

Exhibit A - Revised Consent Agreement

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.1.1. 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).

3.1.2. 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).

3.1.3. 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).

3.1.4. Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all impoundments and tributaries to those waters. 40 C.F.R. § 122.2.

3.2. 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)(B); 40 C.F.R. § 122.26(a)(1)(ii).

3.2.1. 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), (b)(14).

Factual Background

3.3. Respondent is a corporation organized under the laws of the State of Washington, and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.4. Respondent owns and operates an automotive parts and accessories facility (“Facility”), located at 199 Pease Road in Burlington, Washington, 98233. The Facility’s industrial activities are predominantly auto wrecking and tire recycling.

3.5. The Facility employs a vegetated swale to infiltrate and convey stormwater runoff generated within the Facility’s footprint. The swale discharges into Gages Slough.

3.6. Gages Slough is a non-navigable tributary of the Skagit River. The Skagit River flows to the Puget Sound. Gages Slough, the Skagit River, and Puget Sound are “waters of the United States,” and are subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

3.7. Because the Facility’s vegetated swale discharges into “waters of the United States,” it is a “point source” under the CWA. CWA § 502(14), 33 U.S.C. § 1362(14); 40 C.F.R.

§ 122.2.

3.8. At all times relevant to this Consent Agreement, Respondent was authorized to discharge industrial stormwater that conformed to the requirements of Industrial Stormwater General Permit (“ISGP”) number WAR000816, issued by the Washington State Department of Ecology (“Ecology”), which became effective on January 2, 2015, and expires on December 31, 2019. The Facility has been covered under the ISGP since March 12, 1993.

3.9. The Facility’s Standard Industrial Classification (“SIC”) is 5015/5093. According to Condition S1, Table 1, of the 2010 ISGP, the 5015/5093 SIC includes “Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards.”

3.10. EPA inspected the Facility on October 8, 2015, and returned the following day to complete the inspection (collectively, the “Inspection”). The purpose of the Inspection was to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26, and the ISGP.

3.11. During the Inspection, EPA noted that only two stormwater discharges from the Facility’s vegetated swale had occurred since 2012. The first event occurred on February 21, 2012, and the second occurred on December 11, 2014.

Sampling and Reporting

3.12. Condition S4. of the ISGP establishes stormwater sampling requirements for all permittees. Condition S4.B.1.d. of the ISGP states that “[t]he Permittee shall obtain representative samples . . . ,” and a “representative sample” is defined in the ISGP as “a sample of the discharge that accurately characterizes stormwater runoff generated in the designated

drainage of the facility.”

3.13. Condition S9. of the ISGP establishes reporting, recordkeeping and record retention requirements. Condition S9.A. requires all permittees to prepare and submit Discharge Monitoring Reports (“DMRs”) on a quarterly basis, for reporting the stormwater sampling data obtained during each applicable reporting period. Condition S9.B. requires all permittees to prepare annual reports, for reporting any corrective actions that were evaluated or implemented during that calendar year, and to submit those annual reports by May 15 of the following calendar year.

Count 1

3.14. Conditions S5.A. and S5.B. of the 2010 ISGP require Respondent to sample and analyze stormwater discharges for turbidity, pH, copper, zinc, chemical oxygen demand, and total suspended solids, and to inspect discharges for visible oil sheen.

3.15. Condition S5.B., Tables 2 and 3, specify ug/L as the reporting unit for copper, lead, and zinc.

3.16. Condition S9.A.1. requires permittees to report sampling data obtained during each reporting period on a DMR.

3.17. At the time of Inspection, Respondent supplied the inspector with a copy of its DMRs for the reporting period falling within the first quarter of 2012 (“Q1 2012 DMR”) and the fourth quarter of 2014 (“Q4 2014 DMR”) as well as supporting laboratory documentation for the information contained in the DMRs.

3.18. The laboratory analysis for the Q4 2014 DMR reflected a zinc concentration of 0.048 mg/L, a copper concentration of 0.009 mg/L, and a lead concentration of 0.054 mg/L.

3.19. Respondent reported in the Q4 2014 DMR a zinc concentration of 0.048 µg/L, a copper concentration of 0.009 µg/L, and a lead concentration of 0.054 µg/L.

3.20. One milligram per liter (mg/L) is the same concentration as 1000 micrograms per liter (µg/L). The zinc, copper, and lead concentrations reported by Respondent were therefore one thousand times lower than the concentrations reported by the laboratory to Respondent.

3.21. **Violation:** Respondent violated Condition S9.A.1. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent submitted DMRs that failed to accurately report zinc, copper, and lead concentrations.

Count 2

3.22. Condition S5.B., Table 3, of the 2010 ISGP specifies “Total Petroleum Hydrocarbon” (TPH) as a required sampling parameter for facilities with a 5015/5093 SIC.

3.23. Upon review of the relevant DMRs, the inspector found that Respondent did not sample for TPH during the 2014 stormwater discharge event.

3.24. **Violation:** Respondent violated Condition S5.B. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to sample for and report TPH during the 2014 stormwater discharge event.

Stormwater Pollution Prevention Plan and Best Management Practices

3.25. Condition S3. of the 2015 ISGP requires all permittees covered by the ISGP to prepare and maintain a Stormwater Pollution Prevention Plan (“SWPPP”).

3.26. Conditions S3.B.4.b.i.5.–7. and S3.B.5. list categorical SWPPP requirements, which include, but are not limited to, “Employee Training,” “Inspections and Recordkeeping,” “Illicit Discharges,” and “Sampling Plan.”

3.27. Condition S3.A.3.d. states that “if a Permittee covered under the 2010 ISGP needs to update their SWPPP to be consistent with the 2015 ISGP, the update shall be completed by January 30, 2015.”

3.28. Condition S3.B.4.b. of the 2010 ISGP states: “No later than July 1, 2010, the Permittee shall include each of the following mandatory BMPs in the SWPPP” and goes on to list “Employee Training . . . Inspections and Recordkeeping . . . [and] Illicit Discharges.”

Count 3

3.29. Respondent initially prepared a SWPPP for the Facility in or before 1993.

3.30. At the time of Inspection, EPA learned that Respondent has not updated its SWPPP since 1993.

3.31. At the time of Inspection, EPA learned that the SWPPP failed to address “Employee Training,” “Inspections and Recordkeeping,” “Illicit Discharges,” and “Sampling Plan” requirements imposed by the 2010 and 2015 ISGP.

3.32. **Violation:** Respondent violated Conditions S3.A.3.d., S3.B.4.b., S3.B.4.b.i.5.–7. and S3.B.5. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by failing to update its SWPPP and failing to include required provisions in its SWPPP.

Containment and Storage

3.33. Condition S3.B.4.b.i.4)a) of the 2010 ISGP requires permittees to store “all chemical liquids, fluids, and petroleum products, on an impervious surface that is surrounded with a containment berm or dike.”

3.34. Section S3.B.4.b.i.2)d) of the 2010 ISGP requires permittees to “keep all dumpsters under cover or fit with a lid that must remain closed when not in use.”

Counts 4 – 5

3.35. During the Inspection, the inspector observed and documented two containers stored on pavement in the Facility's processing area that were not surrounded with a containment berm or dike.

3.36. One of the containers was labeled "waste oil" and the second was unlabeled. Facility personnel identified the second container as a diesel fuel tank.

3.37. **Violation:** Respondent violated Condition S3.B.4.b.i.4)a) of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when it failed to store two containers of chemical liquids, fluids, or petroleum products on an impervious surface surrounded with a containment berm or dike.

Count 6

3.38. During the Inspection, EPA observed and documented a dumpster on Facility grounds that was left uncovered while not in use.

3.39. **Violation:** Respondent violated Condition S3.B.4.b.i.2)d) of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when it failed to cover a dumpster that was not in use.

Site Inspection Requirements

3.40. Condition S7. of both the 2010 and 2015 ISGP specify requirements for conducting and documenting "visual inspections of the site each month."

3.41. Condition S7.C. requires a permittee to "record the results of each inspection in an inspection report or checklist and keep the records on-site, as part of the SWPPP."

Count 7

3.42. At the time of Inspection, the inspector learned that Facility management conducts site inspections on a bi-weekly basis, but that the inspections are not recorded as part of the SWPPP.

3.43. Facility management identified a protocol of photographically documenting the state of the vegetated swales and catch basins within the Facility using a cellular phone, but only during major rain events.

3.44. **Violation:** Respondent violated Condition S7.C. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by failing to record the results of periodic site inspections and maintain those records on-site as part of the SWPPP.

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.

4.3. Penalty: Pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$10,000.

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. 40 C.F.R. § 22.31(c).

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 Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Young.Teresa@epa.gov

Chae Park, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Park.Chae@epa.gov

4.7. Except as described in Subparagraph 4.8.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.8. 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.

4.8.1. Interest. Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.8.2. Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 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) attorney's 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.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.10. 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 the terms and conditions of this document.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth therein.

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

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

FOR RESPONDENT:

N/A - Awaiting signature pending notice

STEVEN PRICE, Manager
Larry's Auto and Truck Parts, Inc.

DATED:

FOR COMPLAINANT:

N/A - Awaiting signature pending notice

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement