

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2017 SEP 29 PM 2: 23

IN THE MATTER OF:)
)
Guildner Pipeline Maintenance, Inc.)
)
6511 Colorado Boulevard Unit 1,)
Commerce City, Colorado 80022-2252)
)
)
)
Respondent.)

Docket No. CWA-08-2017-0028

FILED
EPA REGION VIII
HEARING ROOM

**ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT
UNDER SECTION 309(a) OF THE
CLEAN WATER ACT, 33 U.S.C.
U.S.C. § 1319(a)**

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by and between the U.S. Environmental Protection Agency and Guildner Pipeline Maintenance, Inc. (GPM).

II. STATUTORY AUTHORITY

2. This Consent Order is issued under section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.
3. The Consent Order is based on THE EPA'S FINDINGS OF FACT AND OF VIOLATION of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except in certain circumstances, including compliance with section 402 of the CWA, 33 U.S.C. § 1342.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon the EPA and upon GPM and GPM's agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or operation of GPM shall alter its responsibilities under this Consent Order unless the EPA, GPM and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than thirty (30) calendar days prior to such transfer, GPM shall notify the EPA of the transfer at the EPA address specified in Paragraph 26 of this Consent Order.

IV. STATEMENT OF THE PARTIES

5. THE EPA'S FINDINGS OF FACT AND OF VIOLATION in Section V of this Consent Order are made solely by the EPA. In signing this Consent Order, GPM neither admits nor denies any of THE EPA'S FINDINGS OF FACT AND OF VIOLATION. Without any admission of liability, GPM consents to issuance of this Consent Order and agrees to abide by its terms. GPM waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review that GPM may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. GPM further agrees not to challenge the jurisdiction of the EPA or THE EPA'S FINDINGS OF FACT AND OF VIOLATION, below, in any proceeding to enforce this Consent Order or in any action taken pursuant to this Consent Order.

V. THE EPA'S FINDINGS OF FACT AND OF VIOLATION

6. On March 23, 2015, at approximately 5:15 PM, the EPA notified the City of Denver that a black, oily substance was discharged into Cherry Creek from a storm drain along Speer Boulevard in Denver, Colorado. An EPA witness provided a complaint and corresponding photos of the discharge to the City of Denver. The City of Denver contacted the owner of the storm sewer system, Auraria Higher Education Center (AHEC). AHEC reported that GPM had contracted with AHEC to service various storm water systems for the campus and had discharged the removed wastewater into the storm drain. GPM paid a \$999 fine to the City of Denver for violating City Ordinance "56-102 ~ ILLEGAL DISCHARGE TO ALLEY" for the discharge.
7. On October 10, 2015, the EPA issued GPM an information request pursuant to section 308(a) of the CWA, 33 U.S.C. § 1318(a), to determine if GPM had serviced other storm water systems and discharged the removed wastewater back into the storm water system or another nearby system.
8. On December 10, 2015, GPM submitted a response to the section 308 request for information.
9. On January 15, 2016, the EPA issued a follow-up request for information pursuant to section 308, of the CWA, 33 U.S.C. § 1318(a).
10. On February 1, 2016, the EPA received a narrative response to its January 15, 2016, section 308 request for information.
11. On March 1, 2016, the EPA received GPM's responsive documents to the follow-up section 308 request for information and reviewed the documentation for compliance with the CWA. The response contained invoices and logs of GPM's storm water system services.
12. On March 18, 2017, and July 24, 2017, GPM provided additional documentation to supplement its response to the January 15, 2016, section 308 request for information. The additional documentation covered all storm water system services provided by GPM from

2012-2017 and informed the EPA that unlike the discharge on March 23, 2015, GPM disposed of pollutants in locations other than in storm water systems.

13. GPM is a Colorado corporation. Therefore, GPM is a “person” for purposes of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
14. GPM is a service company, which among other maintenance activities, provides storm water sewer maintenance and cleaning services.
15. GPM’s operations require the jet-streaming and vacuuming of storm water systems. The liquids and solids removed and then discharged into the storm water systems during these operations contains “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
16. Section 301(a) of the CWA 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the CWA, including a permit under section 402 of the CWA, 33 U.S.C. § 1342.
17. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions. GPM has neither applied nor received any permit authorizing it to discharge pollutants into any navigable water.
18. GPM’s vacuum truck conveyance is a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
19. During the performance of storm water system maintenance services on March 23, 2015, GPM discharged pollutants without a permit from a point source into storm water systems that flow into navigable, interstate waters of the United States within the meaning of 40 C.F.R. § 122.2 and section 502(7) of the CWA, 33 U.S.C. § 1362(7). The EPA determined this to be a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

VI. ORDER

20. Based on THE EPA’S FINDINGS OF FACT AND OF VIOLATION, set forth in Section V of this Consent Order, and pursuant to section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and GPM AGREES to take the actions described below:
21. In accordance with this Consent Order, GPM shall cease all unpermitted discharge of pollutants from debris tanks on its vacuum trucks into any storm water system that does not treat the water before it flows into any receiving navigable, interstate waters of the United States.
22. Within thirty (30) days of GPM’s receipt of a fully executed copy of this Consent Order, GPM shall submit to the EPA documentation, including photographs, if appropriate, of compliance with the following:
 - a. The completion of new log sheets GPM drivers must fill out on every storm water

service job. The new logs are required to include the following:

- i. The location of where the services were conducted;
 - ii. Whether debris containing liquids and solid was removed into GPM's vacuum truck from the storm water system as part of the service performed;
 - iii. The date of that removal;
 - iv. Where the removed liquids and solids were discharged (i.e. a wastewater treatment facility; designated sanitary sewer system; GPM facility);
 - v. The date when the removed liquids and solids were discharged; and
 - vi. The identification and contact information of any authorized client representative who provided instructions for the location of a discharge.
- b. The attachment of signage near the discharge ports on GPM's vacuum trucks that state the following: "Do Not Decant to Storm Sewer."
 - c. The initiation of a mandatory training for all GPM vacuum truck drivers and to ensure that they understand the discharge of liquids removed during a storm water system maintenance service back into the storm sewer that it came from is an illegal discharge. Provide a written overview of this proposed training program.
23. GPM shall submit the following information three months after the effective date of this Consent Order and then one report of the following every six months until the end of the calendar year of 2018 (or no fewer than three submitted reports):
- a. All invoices issued to customers for servicing storm water systems;
 - b. All invoices from the receiving wastewater treatment facilities and all logs documenting each of the requirements as provided in Paragraph 22(a)(i)-(vi), above;
 - c. If GPM does not provide any storm water system maintenance services during a specified quarter, GPM must state that it did not provide any such services and certify the statement in accordance with Paragraph 24, below; and
 - d. Training completion reports for each employee engaged in storm drain vacuuming and jet-streaming.
24. All submittals to the EPA specified in Paragraphs 22 and 23, above, shall include the following certification statements, signed and dated by either a principal executive officer or duly authorized representative of GPM:

I hereby 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 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 or imprisonment for knowing violations.

25. Upon receipt of a notice of noncompliance with this Consent Order, GPM shall, within fifteen (15) calendar days, or such longer time as specified by EPA in its notice of noncompliance, report to the EPA steps taken to cease the specified actions of noncompliance, correct the deficiencies and resubmit the submission.

26. All submittals to the EPA required by this Consent Order shall be provided to:

Laurel Dygowski
U.S. EPA Region 8 (8ENF-W-NP)
1595 Wynkoop Street
Denver, Colorado 80202
Dygowski.laurel@epa.gov
(303) 312-6144

27. All EPA notifications to and communications with GPM related to this Consent Order shall be provided to:

Gerald Guildner
Guildner Pipeline Maintenance, Inc.
6511 Colorado Blvd., Suite #1
Commerce City, Colorado 80022
jerry@Guildner.com

and

Thomas W. Daggett
Daggett Law
1551 Larimer Street, # 1403
Denver, Colorado 80202
twdaggett@comcast.com

28. Each submittal to the EPA required by this Consent Order shall be sent via mail, by hand delivery, or by electronic correspondence to Laurel Dygowski to the email address provided in Paragraph 26, above. All notifications and communications to GPM regarding this Consent Order shall be sent by electronically by email to the GPM contacts specified in Paragraph 27, above, with a corresponding copy sent by U.S. mail.

29. Upon approval by the EPA, the deliverables, invoices, specifications, schedules, or attachments required by this Consent Order are deemed incorporated into this Consent Order. Any non-compliance with Paragraphs 20 through 28, above, shall be deemed a failure to comply with this Consent Order and shall be subject to EPA enforcement.

30. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, GPM shall notify the EPA orally, to the person identified in Paragraph 26, above, as soon as possible and in writing within ten (10) working days from the date GPM first knew of such event or should have known of such event by exercise of due diligence, whichever is

earlier. GPM's written notice shall specify the date GPM first knew of the delay, the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by GPM to minimize the delay and a timetable by which those measures will be or have been implemented. Notification to EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of GPM to comply with requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.

31. If GPM demonstrates to EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond GPM's control (or the control of any of GPM's agents) that GPM could not have foreseen and prevented despite due diligence, and that GPM has taken all reasonable measures to prevent or minimize such delay, EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. EPA's determination on these matters shall be made as soon as possible and in writing within ten (10) working days, after the receipt of GPM's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of GPM.

VII. GENERAL PROVISIONS

32. Issuance of this Consent Order shall not be deemed an election by the EPA to forego any civil or criminal action to seek civil penalties, fines or other appropriate relief under the CWA for violations giving rise to the Consent Order.
33. This Consent Order does not constitute a waiver or modification of any requirements of the CWA, 33 U.S.C. §§ 1251 – 1387, all of which remain in full force and effect, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.
34. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve GPM of its obligation to comply with any applicable federal, state or local law or regulation.
35. This Consent Order constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
36. Failure to comply with the terms of this Consent Order may subject GPM to civil penalties of up to \$52,414 per day for each violation of an order issued by the Administrator of the EPA under section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. part 19.
37. This Consent Order shall become effective upon receipt by GPM of a fully executed copy. All time periods herein shall be calculated from the date of receipt of a fully executed copy of the Consent Order, unless otherwise provided in this Consent Order.
38. GPM shall allow, or use its best efforts to allow, access by any authorized representatives of EPA, or any of EPA's contractors, upon proper presentation of credentials, to sites and records relevant to this Consent Order for any of the following purposes:
 - a. To inspect and monitor compliance with this Consent Order; and

- b. To verify and evaluate data and other information submitted by GPM to EPA.
39. This Consent Order shall in no way limit or otherwise affect EPA's authority, or the authority of any governmental agency, to enter GPM's facility, conduct investigations, have access to records, issue notices and orders for enforcement, compliance or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit or court order.
40. Each party shall bear its own costs and attorney fees in connection with this matter. This Consent Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA following the compliance with all requirements in this Consent Order including the completion of the 2017 and 2018 calendar years. GPM may petition EPA to terminate this Consent Order upon completion of the requirements in this Consent Order, and demonstrated compliance with the Clean Water Act. The EPA, in its sole discretion, will determine whether to grant such a petition from GPM.

**U.S. ENVIRONMENTAL
PROTECTION AGENCY, REGION 8.**

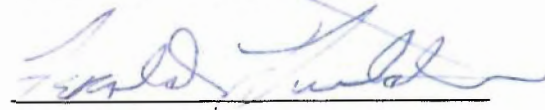
Date: 9/29/2017



Kimberly S. Opekar,
Acting Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

**GUILDNER PIPELINE
MAINTENANCE, INC.**

Date: 9/28/2017



Gerald Guildner
Owner/President