

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

Received by
EPA Region 1
Hearing Clerk

)
IN THE MATTER OF)
)
Minichiello Bros., Inc.)
431 2nd Street)
Everett, MA 02149,)
)
Respondent)
)
Proceeding under Section 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

DOCKET NO: CWA-01-2023-0026

**ADMINISTRATIVE CONSENT
AGREEMENT AND FINAL ORDER**

1. The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 1 (“EPA”) enters into this Consent Agreement and Final Order (“CAFO”) with Minichiello Bros., Inc. (“Minichiello Bros.” or “Respondent”), under authority Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with applicable delegations and 40 C.F.R. §§ 22.13(b) and 22.18 of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits* (“*Consolidated Rules*”), for the purpose of resolving alleged violations of Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a).

2. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts this action.

General Allegations

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership, [or] association."

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, garbage, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

12. 40 C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

14. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

15. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

16. 40 C.F.R. § 122.26(b)(14)(vi) specifies that facilities engaging in industrial activity include facilities classified as Standard Industrial Classification (“SIC”) 5093 (metal scrapyards–Sector N).

17. 40 C.F.R. § 122.26(b)(14) specifies that the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among other things, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Material handling activities include storage, loading and unloading,

transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product.

18. On June 4, 2015, EPA reissued the NPDES Stormwater Multi-Sector General Permit for Industrial Activity (“2015 MSGP”). 80 Fed. Reg. 34403 (June 16, 2015).

19. On January 15, 2021, EPA reissued the NPDES Stormwater Multi-Sector General Permit for Industrial Activity (“2021 MSGP”). 86 Fed. Reg. 10269 (Feb. 19, 2021).

20. Both the 2015 MSGP and the 2021 MSGP contain terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharge associated with industrial activity.

Findings of Violation

21. Scrap It, Inc. (“Scrap It”) and Minichiello Bros., Inc. (“Minichiello Bros.”) are Massachusetts corporations wholly owned by Frank Minichiello Jr. and Tanya Minichiello.

22. Respondent is a “person” within the meaning of and 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 112.2.

23. Respondent is the owner and operator of a scrap metal recycling and processing site located at 431 2nd Street in Everett, Massachusetts (the “Everett Facility”) doing business under the name “Scrap It.” The Everett Facility is primarily a scrap metal processing site for ferrous/non-ferrous metals. The Everett Facility includes a large warehouse for sorting ferrous/non-ferrous metals as well as exterior scrap materials storage piles scattered throughout the site. Its primary SIC code is 5093 (Scrap Recycling and Waste Recycling Facilities–Sector N of the 2021 MSGP).

24. Since at least February 19, 2010, Respondent has conducted “industrial activity,” within the meaning of 40 C.F.R. § 122.26(b)(14)(ii) and 40 C.F.R. § 122.26(b)(14)(iii) at the Everett Facility.

25. The Everett Facility last had coverage under the 2008 MSGP which expired on September 29, 2013.

26. The Everett Facility has been operating without coverage under the MSGP since September 29, 2013.

27. Because the Everett Facility was not covered by the 2015 MSGP or 2021 MSGP, Respondent was not authorized to discharge stormwater from the Everett Facility.

28. Stormwater from the Everett Facility associated with industrial activity discharges to the City of Everett's Municipal Separate Storm Sewer System ("MS4") and ultimately into the Mystic River, which is a waters of the U.S.

29. On January 18, 2021, EPA sent Scrap It an information request letter under authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a), requesting that Scrap It provide certain additional information to EPA within 30 days of receipt.

30. EPA received Scrap It's February 18, 2021 response letter to EPA's information request.

31. On October 25, 2021, authorized representatives of EPA inspected the Everett Facility for compliance with federal environmental laws and regulations under the CWA (the "Inspection").

32. On December 17, 2021, EPA sent Scrap It the inspection report and a follow-up letter requesting additional information from Scrap It.

33. On October 14, 2022 Minichiello Bros. submitted a Notice of Intent (NOI) for coverage under the 2021 MGSP seeking authorization for stormwater discharges associated with industrial activity at the Everett Facility.

34. On October 18, 2022, EPA received an Excel Spreadsheet with the Everett Facility's

sampling history from March 2017 through September 2022 as well as the lab testing results from a September 9, 2022 sampling event.

35. From September 29, 2013 through the present, during certain wet-weather events, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from outfalls on the property into Everett’s MS4 which ultimately flows into surface waters of the U.S.

36. By discharging stormwater during certain wet-weather events from outfalls into waters of the U.S. without coverage of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from September 29, 2013 through October 14, 2022.

Consent Agreement

37. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

38. Consistent with 40 C.F.R. 22.18(b)(2), Respondent admits the jurisdictional allegations set forth in this CAFO, and neither admits nor denies the factual or non-jurisdictional allegations set forth in this CAFO.

39. Respondent waives the right to a hearing under Section 309(g)(2)(B) and CWA, 33 U.S.C. § 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

40. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$54,420 for all violations alleged in this CAFO.

41. Respondent shall pay the total penalty of \$54,420 within ten (10) calendar days of the date this CAFO becomes final.

42. In agreeing to the penalty set forth in paragraphs 40 and 41, EPA has taken into account the statutory penalty factors at Section 309(g)(3) CWA, 33 U.S.C. § 1319(g)(3). The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

43. At the time of payment, Respondent shall simultaneously send notice of the payments or copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 4-MO)
Boston, MA 02109-3912

and

Jeff Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 4-WO)
Boston, MA 02109-3912

44. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Consent Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

45. The provisions of this CAFO shall apply to, and be binding on, Respondent, and Respondent's officers, directors, and successors or assigns. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21,

and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

46. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein through the effective date of this CAFO.

47. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

48. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

49. Except as described in paragraph 44 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

50. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest or nonpayment penalties, and submitted the documentation required by this CAFO.

51. The terms, conditions, and requirements of this CAFO may not be modified or

amended except upon the written agreement of all parties, and approval of the Regional Administrator or his or her properly authorized delegee.

52. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR MINICHELLO BROS., INC.



Frank Minichiello
Vice President
Minichiello Bros., Inc.

Date: 03/14/2023

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

James Chow, Acting Director
Enforcement and Compliance Assurance Division

Date: _____

FINAL ORDER

1. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) and of the CWA, 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. Part 22.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1