

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 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 CAFO 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

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. 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.”

Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to 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 tributaries to those waters. 40 C.F.R. § 122.2.

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial waste.

3.4. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources and establish a comprehensive program to regulate these additional sources.

3.6. EPA’s regulations define “storm water discharge associated with industrial activity” to include the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Industrial stormwater is a type of pollutant. 40 C.F.R. § 122.26(b)(14).

3.7. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.8. In October 2009 Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The

2010 Stormwater GP became effective on January 1, 2010, and expired on January 1, 2015. The 2010 Stormwater GP was modified with the new effective date of July 1, 2012. The 2010 Stormwater GP authorized certain discharges of stormwater associated with industrial activity at permitted facilities.

3.9. In December 2014 Ecology reissued the Washington Industrial Stormwater General Permit ("2015 Stormwater GP") pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2015 Stormwater GP became effective on January 2, 2015, and has an expiration date of December 31, 2019. The 2015 Stormwater GP authorizes certain discharges of stormwater associated with industrial activity at permitted facilities.

3.10. The 2010 and 2015 Stormwater GPs require facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater from the facility discharges to a surface water body or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable Stormwater GP.

3.11. Respondent is a corporation duly organized under the laws of the State of Washington and is therefore a "person" as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.12. At all times relevant to this action, Respondent was the owner and/or operator of a roofing product manufacturing facility located in Sumas, Washington ("Facility").

3.13. The Facility, which was under Respondent's control at all times relevant to this action, discharges stormwater off-site via a drainage ditch that flows into Johnson Creek as permitted under the 2015 Stormwater GP. The Facility's stormwater discharges contain

“pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.14. Johnson Creek flows into the Sumas River. The Sumas River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Sumas River is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2. Johnson Creek is a tributary to the Sumas River and is therefore a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.15. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.16. At all times relevant to this CAFO, the Facility had coverage under the 2010 Stormwater GP and the 2015 Stormwater GP (permit no. WAR003375).

3.17. Respondent violated the 2010 Stormwater GP and the 2015 Stormwater GP between May 2012 and October 2015. Violations were discovered during EPA’s October 2015 inspection of the Facility, and upon EPA’s review of Respondent’s stormwater pollution prevention plan (“SWPPP”), annual reports, site inspection reports, and training records.

Count 1: Failure to Submit Annual Reports

3.18. Condition S9.B.1. of the 2010 Stormwater GP and 2015 Stormwater GP states that the Permittee “shall submit a complete and accurate Annual Report to the Department of Ecology no later than May 15th of each year.”

3.19. Respondent failed to submit an Annual Report to Ecology in 2012, 2013, 2014, and 2015.

3.20. For at least four consecutive years from 2012 to 2015, Respondent failed to submit a complete and accurate Annual Report to Ecology in violation of Condition S9.B.1. of the 2010 and 2015 Stormwater GPs and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Implement SWPPP Employee Training Best Management Practices (“BMPs”)

3.21. Condition S3.A.1. of the 2015 Stormwater GP states that the Permittee shall “develop and implement a SWPPP for the permitted facility.”

3.22. Condition S3.B.4.b.i.5. of the 2015 Stormwater GP states that the SWPPP “shall include BMPs to provide SWPPP training for employees who have duties in areas of industrial activities subject to this permit.” Condition S3.B.4.b.i.5. specifies that the training plan must include the content of the training, including an overview of what is in the SWPPP and how employees make a difference in complying with the SWPPP and preventing the contamination of stormwater.

3.23. Section 5.1.5 of Respondent’s SWPPP, dated October 2013, states that “a formal training session will be conducted by the SWPPP Team for all personnel who have duties that may be affected by the provisions of the General Permit. Training will be conducted annually, unless conditions or personnel changes indicate that more frequent training is necessary. The affected employees will be made aware of the purpose and contents of the SWPPP.”

3.24. During EPA’s October 2015 inspection of the Facility, a representative for the Facility presented EPA with a 2015 monthly training plan as well as training records, none of which adequately addressed the SWPPP.

3.25. On at least one occasion in October 2015, Respondent failed to adequately implement SWPPP employee training BMPs in violation of Condition S3.B.4.b.i.5. of the 2015 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Sign and Certify SWPPP

3.26. Condition S3.A.6. of the 2015 Stormwater GP states that the Permittee “shall sign and certify all SWPPPs in accordance with General Condition G2.”

3.27. At the time of EPA’s October 2015 inspection of the Facility, Respondent’s SWPPP, dated October 2013, was not signed and certified.

3.28. On at least one occasion in October 2015, Respondent failed to sign and certify the Facility’s SWPPP in violation of Condition S3.A.6. of the 2015 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 4: Failure to Conduct and/or Document Monthly Site Inspections

3.29. Condition S7.A.1. of the 2015 Stormwater GP states that the Permittee “shall conduct and document visual inspections of the site each month.”

3.30. Condition S7.C. of the 2015 Stormwater GP states that the Permittee “shall record the results of each inspection in an inspection report or checklist and keep the records on-site.”

3.31. Respondent was unable to produce site inspection reports or checklists for July 2015, August 2015, and September 2015.

3.32. For at least three consecutive months between July and September 2015, Respondent failed to conduct and/or document visual inspections of the Facility in violation of Conditions S7.A.1. and S7.C. of the 2015 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 5: Failure to Sign and Certify Monthly Site Inspection Results

3.33. Condition S7.C.1.f. of the 2015 Stormwater GP states that the Permittee shall ensure that each inspection report includes the certification and signature of a designated person.

3.34. Respondent failed to sign and certify its monthly inspection reports for the following months: January 2015; February 2015; March 2015; April 2015; May 2015; and June 2015.

3.35. For at least six consecutive months between January and June 2015, Respondent failed to ensure that each monthly site inspection report was signed and certified in violation of Condition S7.C.1.f. of the 2015 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 6: Failure to Keep Dumpsters Under Cover

3.36. Condition S3.B.4.b.i.2.d. of the 2015 Stormwater GP states that, as part of the good housekeeping BMPs, the Permittee shall “[k]eep all dumpsters under cover or fit with a lid that must remain closed when not in use.”

3.37. At the time of EPA’s October 2015 inspection of the Facility, EPA representatives observed two dumpsters that were uncovered while not in use.

3.38. On at least two instances in October 2015, Respondent failed to keep all dumpsters covered when not in use in violation of Condition S3.B.4.b.i.2.d. of the 2015 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 7: Failure to Conform to Sampling Requirements

3.39. Condition S4.C. of the 2010 Stormwater GP states that the Permittee “shall ensure that analytical methods used to meet the sampling requirements in this permit conform to the

latest revision of the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR Part 136” (“Guidelines”). The Guidelines specify preservation temperatures of less than or equal to six degrees Celsius for parameters such as pH.

3.40. The sample preservation temperature for the pH sample collected at the Facility on July 23, 2012, exceeded 6°C.

3.41. On at least one occasion in July 2012, Respondent failed to ensure that the analytical methods used to meet the Stormwater GP sampling requirements conformed to the Guidelines in violation of Condition S4.C. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.42. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated any permit condition or limitation ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by 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 this action is \$29,000.

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 contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check 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 described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO 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.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 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.

4.7.2. Attorneys 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) 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 CAFO 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 CAFO, Respondent has corrected the violations alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

12/14/16

FOR RESPONDENT:

Nick Nachbar

NICK NACHBAR, Plant Manager
IKO Pacific Inc.

DATED:

12/20/2016

FOR COMPLAINANT:

Edward J. Kowalski

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

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

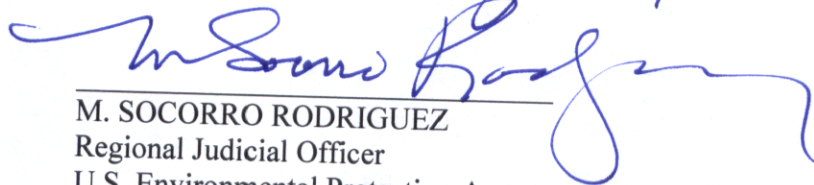
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO 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.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. 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), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 3rd day of January, 2017.



M. SOCORRO RODRIGUEZ
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: IKO PACIFIC INC., DOCKET NO.: CWA-10-2017-0026**, 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:

Leah Brown
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:

Nick Nachbar
IKO Pacific Inc.
850 West Front Street
Sumas, Washington 98295

DATED this 4 day of January, 2017


Signature

Teresa Luna
Regional Hearing Clerk
EPA Region 10