

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
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)
LEWIS AUTO AND TRUCK PARTS) Docket No. CWA-07-2017-0039
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)
Topeka, Kansas)
)
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
) ON CONSENT
)
)
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. This Findings of Violation and Administrative Order for Compliance on Consent (“Order”) is issued pursuant to Section 309(a)(3) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is Lewis Auto and Truck Parts (“Lewis Auto” or “Respondent”), a corporation under the laws of the state of Kansas. Respondent is the owner and/or operator of a facility, located at 229 Burgess Street, Topeka, Kansas 66608 (“Facility”).

3. EPA, together with the Respondent (hereafter collectively referred to as the “Parties”), enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address Respondent’s alleged noncompliance with the CWA in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this agreement, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations asserted by EPA as set forth in this Order, except that Respondent admits the jurisdictional allegations herein.

Statutory and Regulatory Framework

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge pollutants, except in compliance with, *inter alia*, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. The CWA prohibits the "discharge" of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14) defines "storm water discharge associated with industrial activity" as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant." Included in the categories of facilities considered to be engaging in "industrial activity" are facilities involved in the recycling of materials such as metal scrapyards, salvage yards and automobile junkyards, including those classified as Standard Industrial Classification ("SIC") 5015 and 5093. *See* 40 C.F.R. § 122.26(b)(14)(vi).

13. The Kansas Department of Health and Environment ("KDHE") is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

EPA's General Allegations

14. Respondent is a "person," as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. Respondent is and was at all times relevant to this action the owner and/or operator of an automobile and truck salvage yard comprised of approximately 7.4 acres and operating under SIC codes 5015 and/or 5093.

16. Stormwater, snow melt, surface drainage and runoff water leave Respondent's Facility and discharge to the Kansas River.

17. The runoff and drainage from Respondent's Facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

18. Stormwater from the Facility contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. The Facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The Kansas River is a "navigable water[]" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. Stormwater runoff from Respondent's industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

22. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

23. KDHE implemented General Permit Number KSR000423 for the discharge of stormwater under the NPDES on November 1, 2011. The permit governs stormwater discharges associated with industrial activities, including automobile salvage yards. Respondent applied for and was issued NPDES permit coverage under the general permit described above ("Permit"), which expired on October 31, 2016, and was renewed on November 1, 2016. Coverage under the new general permit expires October 31, 2021.

24. On or about March 30, 2016, EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("EPA Inspection") of Respondent's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its Permit and the CWA.

25. At the conclusion of the EPA Inspection, the EPA inspector issued a Notice of Potential Violation to Respondent identifying potential violations of Respondent's Permit. A

copy of the EPA inspection report was sent to Lewis Auto by letter dated April 18, 2016. The inspection report identified potential violations, including those described below.

EPA's Findings

26. The facts stated above are incorporated herein by reference.

Count 1

Inadequate Stormwater Pollution Prevention Plan ("SWPPP") and Failure to Periodically Amend the SWPPP

27. Section 2.1 of Respondent's NPDES Permit, issued by KDHE, requires that the permittee develop a SWPPP and fully implement, periodically review, and update as necessary, the provisions of the SWPPP.

28. Section 2.4 of Respondent's Permit requires that the SWPPP contain certain minimum requirements. These requirements include, but are not limited to:

- a. A description of the Stormwater Pollution Prevention Team identifying specific individuals or positions who are responsible for developing, implementing, maintaining and revising the SWPPP;
- b. A site map correctly identifying, among other elements, the scale of the map, the outlined drainage areas and the name of the first water body to which stormwater runoff is discharged.

29. During the EPA Inspection, the inspector found that the Stormwater Pollution Prevention Team in Respondent's SWPPP listed James Environmental Management, Inc. as the team member responsible for completing the annual comprehensive site compliance review, sampling interpretation and reporting, and employee training. The Respondent, however, has not contracted with James Environmental Management, Inc. for such work since 2010.

30. The EPA Inspection also found that Respondent's site map was inadequate because it did not identify the outlined drainage areas, did not identify the scale of the map and did not identify the name of any water bodies to which stormwater runoff is discharged.

31. Section 2.4.6 of Respondent's Permit requires that Respondent re-evaluate and modify its SWPPP in a timely manner, but in no case more than 90 days, whenever there is a change in design, construction, operation or maintenance that has a significant effect on the potential for the discharge of pollutants. Section 4.4 of the Permit also requires Respondent to update the SWPPP to reflect significant changes to the Facility.

32. At the time of the EPA Inspection, the SWPPP had not been updated since March, 2009. The site map identified storage racks where the vehicle receiving area is now located. The EPA inspector noted that there is a potential for an increase in oil leaks and spills in the area where the vehicle receiving area is currently located. The change in the location of the vehicle receiving area is a change in the design, construction, operation or maintenance of the Facility

that has a significant effect on the potential for the discharge of pollutants. The site map, however, was not updated at the time of the EPA Inspection to reflect those changes.

33. EPA finds that each of Respondent's violations described above, is a violation of the terms and conditions of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

Count 2

Failure to Implement Adequate Control Measures or Take Sufficient Corrective Actions to Improve Control Measures

34. Section 2.4.3 of Respondent's Permit requires Respondent to list and describe best management practices ("BMPs") appropriate for the Facility in its SWPPP, including, but not limited to, BMPs for good housekeeping practices, sediment and erosion controls, preventative maintenance, spill prevention and response procedures, inspections and management of runoff.

35. Section 2.4.6 of Respondent's Permit requires Respondent to update or modify the SWPPP within 90 days if inspections required by the Permit indicate deficiencies in any BMP or indicate the SWPPP appears to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the SWPPP.

36. Respondent's good housekeeping procedures in Section 4.3 of its SWPPP require Respondent to keep floors clean by using absorbent materials when needed and sweeping them up promptly. In addition, the SWPPP procedures require Respondent to inspect regularly for leaks or spills and respond immediately if identified, inspect equipment daily for leaks, place a drip pan under the leak and clean up any leaks immediately and repair leaking equipment as soon as possible.

37. The EPA Inspection found oil stains or spills on the ground in various locations on the Facility site. In addition, the EPA inspector observed car parts being stored in truck beds that were leaking vehicle fluid on to the ground.

38. Respondent's good housekeeping procedures in Section 4.3 of its SWPPP require Respondent to clean up garbage and waste material left from dismantling regularly, ensure each work area is cleaned up at the end of each workday and sweep the Facility floors daily.

39. The EPA Inspection found trash and other debris scattered at various locations on the Facility grounds. During the EPA Inspection, Brett Lewis, the general manager of the Facility, informed the EPA inspector that the Facility yard is generally only cleaned three times per year.

40. The findings above indicate that Respondent has failed to adequately identify deficiencies in BMPs and the SWPPP and modify the SWPPP to address these deficiencies. Respondent's failure to implement adequate control measures and take adequate corrective actions to improve control measures is a violation of the terms and conditions of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

Count 3
Failure to Conduct and/or Document Routine Site Inspections

41. Section 2.4.3 of Respondent's Permit issued by KDHE requires the Respondent to conduct inspections at least quarterly and to include the frequency of inspections and follow-up procedures in the SWPPP to ensure that appropriate actions are taken in response to the inspections. The inspection reports must include completion dates for the correction of all deficiencies.

42. Section 2.4.5 of the Permit requires that Respondent also perform a visual examination of the water quality of a stormwater discharge at least once per year from each outfall. Visual examinations must be documented in a report that includes the date, time, name of the person performing the examination, nature of the discharge, visual quality of the discharge and probable sources of any observed contamination. The Permit requires that the Facility keep records of inspections on-site or in a readily accessible location for at least three years after the date of inspection.

43. Section 4.6 of Respondent's SWPPP requires the Respondent to conduct individual inspections of each incoming vehicle. The inspector is to document all findings and corrective actions on the checklist provided at the back of the SWPPP or on an existing vehicle inventory form used by the Facility, and to file the completed inspections with the SWPPP.

44. Section 4.6 of the SWPPP also requires Respondent to conduct and document quarterly inspections. The SWPPP requires each area identified as a potential pollutant source to be checked and all equipment containing hydraulic or other fluids to be inspected for leaks. Vehicles stored but not drained of fluids must also be inspected for leaks during the quarterly inspection. Written records of the quarterly inspections must be maintained with the SWPPP.

45. Section 6.2 of Respondent's SWPPP requires Respondent to conduct visual wet weather observations at least once per year, and include documentation that no noticeable pollutants were present in the stormwater discharge.

46. At the time of the EPA Inspection, Respondent was unable to produce any inspections for the past three years, as required by the Permit. Based on the records available at the Facility at the time of the EPA Inspection, the incoming vehicle inspection records were not documented after 2011, the annual visual examinations of stormwater quality were not documented after 2010 and the quarterly inspections were not documented after the first quarter of 2012.

47. Respondent's failure to conduct and/or adequately document inspections is a violation of the terms and conditions of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

Count 4

Failure to Conduct and/or Document Annual Comprehensive Site Evaluations

48. Section 2.4.4 of Respondent's Permit requires Respondent to conduct a comprehensive site compliance evaluation at least once per year. The evaluation must include visual inspections of areas contributing to an industrial stormwater discharge for evidence of, or the potential for, pollutants entering the stormwater drainage system, examination of measures to reduce pollutant loadings to determine whether they are adequate and properly implemented, and consideration of the availability and condition of equipment needed to implement the plan. The Permit also requires that the comprehensive site evaluation report summarize any actions taken as a result of the evaluation and that resolution to any non-compliance determined from the evaluation be made and retained as part of the SWPPP every year.

49. Section 5.1 of Respondent's SWPPP requires Respondent to conduct an annual comprehensive site compliance evaluation in order to fully assess the Facility and BMPs, and to determine compliance with the SWPPP. Section 5.2 states that the SWPPP should be updated within 30 days of completion of the annual comprehensive site compliance evaluation to include any improvements to BMPs and the SWPPP.

50. During the EPA Inspection, Respondent was unable to provide documentation of annual comprehensive site compliance evaluations for any year after 2010.

51. Respondent's failure to conduct and/or properly document annual comprehensive site evaluations is a violation of the terms and conditions of the Permit, and as such, is a violation of 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

Count 5

Failure to Conduct and/or Document Employee Training

52. Section 2.4.3 of the Permit requires a permittee's SWPPP to include employee training programs to inform personnel responsible for implementing activities identified in the SWPPP, or otherwise responsible for stormwater management, of the components and goals of the SWPPP. The Permit requires the SWPPP to provide for the training of existing and new staff.

53. Section 4.5 of Respondent's SWPPP requires new employees to be trained on stormwater pollution prevention at the time of hire for all new employees and annually thereafter. The SWPPP states that records of training activities must be maintained on-site.

54. Section 2.1 of the Permit requires permittees to fully implement the provisions of their SWPPP as a condition of the Permit. Failure to fully implement all provisions of a SWPPP is a violation of the Permit.

55. During the EPA Inspection, Respondent was unable to provide documentation of employee training for any year after 2008.

56. Respondent's failure to conduct and/or adequately document employee training is a violation of the terms and conditions of the Permit, and as such, is a violation of 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance on Consent

57. Based on the EPA findings set forth above, and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS and Respondent hereby AGREES to take the actions described below.

58. Immediately upon the receipt of this Order, the Respondent shall commence actions necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit.

59. Immediately cease all discharges, except discharges of stormwater in compliance with the Permit.

60. Within 90 days of the effective date of this Order, pursuant to Paragraph 70, Respondent shall provide a report to EPA, with a copy to the KDHE, that includes:

- a. All visual examination reports of stormwater quality that have been conducted since the March 2016 EPA Inspection;
- b. All site inspection reports conducted since the March 2016 EPA Inspection;
- c. All annual comprehensive site evaluations that have been conducted since the March 2016 EPA Inspection;
- d. A revised SWPPP that addresses the deficiencies identified in this Order; and
- e. A detailed description of all corrective actions taken since the March 2016 EPA Inspection to bring the Facility into compliance with the Permit.

61. By no later than October 1, 2017, Respondent shall provide to the EPA, with a copy to KDHE, a report ("Progress Report") containing, at a minimum, the following information for the six (6) months prior to the Progress Report due date:

- a. Records of all visual examination reports, routine site inspections and annual comprehensive site evaluations conducted;
- b. Records of any employee training conducted;
- c. Any revisions to the SWPPP, if applicable;
- d. A detailed description and schedule of all actions and procedures implemented by Respondent during the reporting period to bring the Facility into compliance with the Permit; and

- e. A detailed description and schedule of any actions planned for the next reporting period to bring the Facility into full compliance with the Permit, if applicable.

62. Respondent shall thereafter submit Progress Reports semi-annually to EPA, with a copy to KDHE, on April 1 and October 1 of each year until this Order is terminated pursuant to Paragraph 71.

Submittals

63. All documents required to be submitted to EPA by this Order, shall, whenever possible, be submitted electronically to the EPA contact below and meet the following requirements 1) **only copies**, and not original documents, should be submitted pursuant to this Order, and 2) documents and data may be submitted on a compact disk or flash drive in PDF, Word, Excel or any other widely available electronic format to:

trainor.erin@epa.gov

Documents that cannot be submitted electronically to EPA shall be submitted to:

Erin Trainor, or her successor
Environmental Field Compliance Branch
U.S. Environmental Protection Agency, Region 7
300 Minnesota Ave.
Kansas City, Kansas 66101

64. All documents required to be submitted to KDHE pursuant to this Order shall be submitted to:

Jaime Gagerro, or her successor
Director, Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

65. All submissions made by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I 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 who manage the system, or those persons directly 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 and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of This Order for Compliance

66. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

67. This Order does not constitute a waiver or a modification of any requirement of the CWA, 33 U.S.C. § 1251 *et. seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

68. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

69. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

70. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

71. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

Issued this 3rd day of May, 2017.



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division



Katherine Reitz
Attorney Advisor
Office of Regional Counsel

For the Respondent, Lewis Auto and Truck Parts:

Issued this 22nd day of April, 2017.



Signature

Brett J. Lewis

Name

Owner

Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested to:

Brett Lewis
Lewis Auto and Truck Parts
229 Burgess Street
Topeka, Kansas 66608

and via first class mail to:

Jaime Gaggero, or her successor
Director, Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

Date

5/4/2017

Signature

