

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

MIDWEST AUTO WRECKING CO., LTD.)
d/b/a MIDWEST AUTO SALVAGE)

Respondent)

Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

) Docket No. CWA-07-2011-0015

) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States 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 Midwest Auto Wrecking Co., Ltd., doing business as Midwest Auto Salvage, a corporation incorporated under the laws of the State of Iowa (Iowa) and authorized to conduct business in Iowa.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. 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.

5. 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) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

7. 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.

8. 40 C.F.R. § 122.26(b)(14)(vi) defines “stormwater discharge associated with industrial activity,” in part, as including facilities involved in the recycling of materials, such as metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including those classified as Standard Industrial Classification 5015 and 5093.

9. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The IDNR issued a General Permit for the discharge of stormwater under the NPDES, General Permit No. 1. This General Permit became effective on October 1, 2007, and will remain effective through October 1, 2012. The General Permit governs stormwater discharges associated with motor vehicle salvage yards and scrap metal recycling operations.

Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of the automobile junkyard or salvage yard Midwest Auto Wrecking Co., Ltd., doing business as Midwest Auto Salvage, located at 5831 South Concord Street, in Davenport, Iowa (“the facility” or “the Site”). This business is classified as SIC code 5015.

13. Stormwater, snow melt, surface drainage, and runoff water leave Respondent’s facility via a road or a ditch and then drain into the Mississippi River. The runoff and drainage from Respondent’s facility are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

14. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

16. Respondent discharged pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C. § 1362.

17. Stormwater runoff from Respondent’s construction site 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).

18. 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.

19. Respondent applied for and was issued NPDES permit coverage under the General Permit described in Paragraph 10 above. IDNR assigned Respondent authorization number IA-16538-16467 on January 8, 2009.

20. On April 21-22, 2010, an EPA inspector performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

21. The facts stated in Paragraphs 11 through 20, above, are herein incorporated.
22. Part III.C of Respondent’s permit requires Respondent to develop a Storm Water Management Plan (“SWPPP”) in accordance with good engineering practices.
23. Part III.C.4 of Respondent’s permit requires that the SWPPP include, *inter alia*, the following items:
 - a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges, and a

description of all activities and significant materials which may potentially be significant pollution sources (III.C.4);

- an estimate of the types of pollutants that are likely to be present in storm water discharges (III.C.4.A(5));
- storm water management controls, and specific information pertaining to the storm water management controls, including:
 - o a preventive maintenance plan (III.C.4.B(3)),
 - o spill prevention and response procedures (III.C.4.B(5)),
 - o a narrative consideration of the appropriateness of traditional storm water management practices (III.C.4.B(6)),
 - o a sediment and erosion prevention plan (III.C.4.B(7)),
 - o and employee training programs that inform personnel at all levels of responsibility of the components and goals of the SWPPP (III.C.4.B(8));
- a description of the practices to be implemented to reduce pollutants in storm water discharges associated with industrial activity at the facility (III.C); and
- identification of appropriate pollution prevention measures for the non-storm water component(s) of the discharge (III.C.4.H).

24. The EPA inspection referenced in Paragraph 20, above, revealed that Respondent's SWPPP failed to include many of the components required by Part III.C.4 of Respondent's permit, and that many of the components present in the SWPPP were inadequate or not in accordance with good engineering practices. Specifically, Respondent's description of potential pollutant sources was inadequate. Respondent failed to identify and describe sediment from concrete truck washouts as a potential source of pollution. Respondent also failed to provide a prediction of what types of pollutants are likely to be present in storm water discharges. Most importantly, Respondent's storm water management controls were inadequate. Respondent's SWPPP lacked the requisite description of storm water management controls, and the controls listed were incomplete. The SWPPP listed as Best Management Practices ("BMPs") vague phrases such as "Spot Em, Repair Em," "Visual," and "Look See Act," which are not BMPs, but did not identify or describe the structural BMPs present at the site. Respondent did not provide the requisite preventive maintenance plan, spill prevention and response procedures, narrative consideration of traditional storm water management practices, sediment and erosion prevention plan, or employee training program. Respondent acknowledged during the inspection that it had not conducted employee training.

25. Part III.C of Respondent's permit requires Respondent to implement the provisions of the SWPPP required under Part III as a condition of the permit.

26. Part III.C.4.C of Respondent's permit requires that qualified personnel shall inspect designated equipment and facility areas at appropriate intervals, as specified in the SWPPP, but at least once per year. Respondent's SWPPP requires Respondent to conduct monthly, quarterly, or biannual inspections, depending on the area to be inspected. Part III.C.4.B(9) requires Respondent to document inspections, and Part III.C.4.C(3) requires that documentation to include a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and any resulting revisions to the SWPPP.

27. Part III.C.4.B(4) of Respondent's permit mandates that Respondent practice "good housekeeping," which requires the maintenance of a clean, orderly facility.

28. The EPA inspection referenced in Paragraph 20, above, revealed that Respondent failed to implement the inspection and housekeeping provisions of its SWPPP. Respondent failed to conduct and document any site inspections. Respondent also failed to practice good housekeeping by improperly storing automobile parts such as engines, transmissions, and gas tanks, by leaving them uncovered and/or otherwise unprotected. Spilled automobile fluids and ground discoloration indicative of such spills were present throughout the facility. Respondent acknowledged these housekeeping failures in its response to the inspection.

29. Respondent's failure to develop and implement an adequate SWPPP is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Failure to Maintain Best Management Practices

30. The facts stated in Paragraphs 11 through 20, above, are herein incorporated.

31. Part VI.M of Respondent's permit requires Respondent to at all times properly operate and maintain all systems of control that are installed or used by Respondent to achieve compliance with the conditions of this permit and with Respondent's SWPPP.

32. The EPA inspection referenced in Paragraph 20, above, revealed that Respondent failed to properly maintain the catch basin it used as a structural BMP to prevent sediment from truck washouts from reaching the Mississippi River. At the time of the inspection, the catch basin was completely flooded and was therefore not functioning to prevent pollutants from reaching the river.

33. Respondent's failure to properly maintain its storm water management controls at all times is a violation of Respondent's General Permit, and, as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance

34. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 35 through 37.

35. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is 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 Respondent's permit.

36. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA and IDNR a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

37. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within those thirty (30) days, submit to EPA a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

38. Each submission to EPA pursuant to the requirements of this Order shall include a written statement by the City signed by a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

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.

39. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Mr. Michael Boeglin
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency – Region 7
901 North Fifth Street
Kansas City, Kansas 66101-2907.

40. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Mr. Dennis Ostwinkle
Field Office #6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353-1623.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

41. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an administrative or judicial 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.

42. This Order does not constitute a waiver or a modification of any requirements 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

43. 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

44. 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.

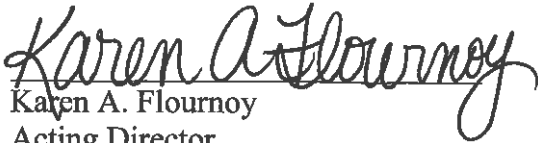
Effective Date


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

Termination

46. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 10th day of March, 2011.


Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division


Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

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

Mr. Thomas J. Pastrnak
Registered Agent
Midwest Auto Wrecking Co., Ltd.
313 West 3rd Street
Davenport, Iowa 52801

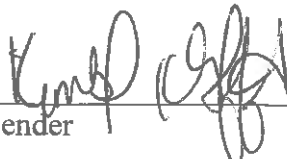
and

Mr. John K. Clarke
President-Owner
Midwest Auto Wrecking Co., Ltd.
5831 South Concord Street
Davenport, Iowa 52802-3124

and via first class mail to:

Mr. Dennis Ostwinkle
Field Office #6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353-1623.

3/11/14
Date


Sender