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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2014-0145
)	
Murrey's Disposal Company, Inc.)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Fife, Washington)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Murrey's Disposal Company, Inc. ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

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. Respondent is a corporation registered under the laws of the State of Washington and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.2. Respondent operates the real property located at 4622 70th Avenue East in Fife, Washington, and identified as Pierce County parcel numbers 0420184061, 0420184018, 0420184039 and 0420184041 (“Facility”). The Facility is comprised of three general areas of operation identified as the DMR Yard, the Transfer Station Parcel (also referred to as the “main yard”) and the East Recycling Truck Yard.

3.3. The DMR Yard and Transfer Station Parcel are situated adjacent to the Puyallup River approximately seven miles upstream of where the Puyallup River enters Commencement

Bay. The East Recycling Truck Yard is situated across 70th Avenue East from the Transfer Station Parcel.

3.4. Respondent conducts operations at the Facility that include solid waste transfer, cleaning and storage of waste containers and waste collection vehicles, and general vehicle maintenance activities. These operations are covered by Standard Industrial Classification code number 4212 and North American Industry Classification System code number 562111.

3.5. Stormwater from the Transfer Station Parcel is collected in onsite catchbasins and routed to a series of retention ponds designed to retain a 100-year storm event but with the potential to discharge through Outfall 01 to the Puyallup River. Stormwater from the DMR Yard is collected in onsite catchbasins and discharged from Outfall 02 through the City of Fife storm sewer system to the Puyallup River. Stormwater from the East Recycling Truck Yard infiltrates to ground through an infiltration gallery.

3.6. The Puyallup River is a navigable water defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.7. Respondent’s discharge of stormwater is a “storm water discharge associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14), and therefore subject to the National Pollutant Discharge Elimination System (“NPDES”) permitting requirements of section 402 of the CWA, 33 U.S.C. § 1342.

3.8. At all times relevant to this CAFO Respondent’s discharge of industrial stormwater was covered by Industrial Stormwater General Permit (“ISGP”) number WAR005639, issued by the Washington State Department of Ecology.

3.9. Section S3 of the ISGP requires all permittees covered by the ISGP to prepare and maintain a Stormwater Pollution Prevention Plan (“SWPPP”). The ISGP establishes minimum SWPPP requirements that include, *inter alia*, Best Management Practices (“BMP”) to eliminate

or reduce the potential to contaminate stormwater and to prevent violations of water quality standards. Condition S3.B.3.c of the ISGP requires as a BMP the immediate cleanup of spills and leaks to prevent the discharge of pollutants.

3.10. Section S4 of the ISGP establishes general sampling requirements for all permittees. Condition S4.B.1 requires that a permittee sample each designated location of stormwater discharge at least once per calendar-year quarter.

3.11. Section S7 of the ISGP establishes facility inspection requirements. Condition S7.A.1 requires that permittees conduct and document visual inspections of the facility each month.

3.12. Section S9 of the ISGP establishes reporting, recordkeeping and record retention requirements. Condition S9.A requires the submission of Discharge Monitoring Reports (“DMRs”) containing sampling data obtained during each applicable reporting period. Condition S9.C of the permit requires that a permittee maintain onsite for a minimum of five years records of sampling information, inspections, maintenance, copies of all reports required by the permit, and any other documentation of compliance with ISGP permit requirements.

3.13. On May 13, 2013, Complainant conducted an unannounced inspection of the Facility to determine Respondent’s compliance with the conditions and requirements of the ISGP. Complainant’s inspection involved both a visual inspection of the Facility and a review of records maintained by Respondent including discharge monitoring reports (“DMRs”) and annual reports required to be prepared and maintained by the ISGP. The findings from Complainant’s inspection of the Facility are documented in an NPDES Inspection Report completed and dated June 5, 2013.

3.14. During the inspection, which occurred during a rainstorm, was conducted while it was raining, Complainant observed several visible oil sheens across the Facility. Three distinct

and separate oil sheens were observed in truck parking and container storage area of the Transfer Station Parcel. Oil sheens were also observed in different areas of the DMR Yard. In the East Recycling Truck Yard an oil sheen was observed draining into an onsite catchbasin that discharges to the ground through an infiltration gallery. At the time of Complainant's inspection, Respondent had taken no discernible action to immediately cleanup the visible spills and leaks of oil in violation of Condition S3.B.3 of the ISGP.

3.15. During the inspection, Complainant reviewed DMRs and annual reports prepared by Respondent. Respondent's DMRs contained no sampling data for stormwater discharges from Outfall 02 between March 2009 and March 2011 in violation of Condition S4.B.1.a of the ISGP which requires that each discharge location be sampled at least once per quarter commencing at the beginning of each calendar year.

3.16. Complainant requested that Respondent provide monthly inspection reports dating back to May 2008 for review either during or following the inspection. Respondent failed to produce monthly inspection reports for each month from March 2009 to July 2011 in violation of Condition S9.C.d of the ISGP which requires that such records be maintained for a period of at least five years from the date of inspection.

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 \$31,400.

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-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
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.

4.11. 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 waives 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:

8/12/14

FOR RESPONDENT:

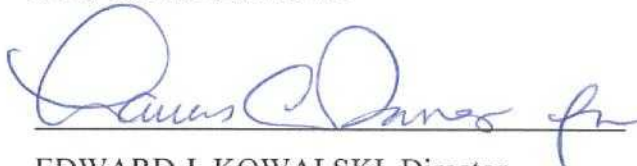


PATRICK J. SHEA
Vice President, General Counsel and Secretary

DATED:

9-8-14

FOR COMPLAINANT:



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 State 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 23rd day of September, 2014.


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: Murrey's Disposal Company, Inc., DOCKET NO.: CWA-10-2014-0145** 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:

Alex Fidis
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
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:

Richard B. Davis
Beveridge & Diamond, P.C.
1350 I Street, NW
Suite 700
Washington, DC 20005

DATED this 23rd day of Sept., 2014



Signature

Candace Smith
Regional Hearing Clerk
EPA Region 10