

FILED

Sep 19, 2024

2:43 pm

**U.S. EPA REGION 8
HEARING CLERK**

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

In the Matter of:)	
)	
)	ADMINISTRATIVE ORDER
Timberlane Auto, LLC)	ON CONSENT
36970 Timberlane Road)	
Ronan, MT 59864)	
)	
)	Docket No. CWA-08-2024-0016
Respondent)	

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA), and Timberlane Auto, LLC (Respondent), to carry out the goals of the Clean Water Act (CWA or Act), 33 U.S.C. §§ 1251-1387, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

II. STATUTORY AUTHORITY

2. This Consent Order is issued under section 309(a) of the CWA, 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned EPA official.

III. PARTIES BOUND

3. This Consent Order shall apply to and be binding upon the EPA and the Respondent and Respondent’s agents, successors, and assigns. Each undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent to the terms and conditions of this Consent Order. No change in the ownership or operation of the Respondent shall alter its responsibilities under this Consent Order unless the EPA, the Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, the Respondent shall notify the EPA of the transfer at the addresses specified in Paragraph 39 of this Consent Order.

IV. FACTUAL AND LEGAL ALLEGATIONS

4. Timberlane Auto, LLC (Timberlane) is a Montana limited liability company created on February 1, 2007.
5. The Respondent is a “person” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(4)-(5), and 40 C.F.R. § 122.2.
6. Timberlane owns and operates two automotive salvage industrial sites in Ronan, Montana, within the exterior boundaries of the Flathead Indian Reservation.
7. The two sites are located at 36970 Timberlane Road and the end of Songer Road in Ronan, Montana (Facilities).
8. The first facility (Timberlane Road Facility), located at 36970 Timberlane Road, encompasses approximately 34.91 acres (Latitude 47.512462°; Longitude – 114.094244°).
9. Automotive salvage activities at the Timberlane Road Facility began in 2007.
10. The second facility (Songer Road Facility), located at the end of Songer Road, approximately 3.7 miles west of Timberlane Road Facility, encompasses approximately 39.67 acres (Latitude 47.51256°; Longitude –114.19658°).
11. The Facilities are located in Indian country, as defined by 18 U.S.C. § 1151.
12. Timberlane engaged in at least one “industrial activity” at the Facilities, as defined in 40 C.F.R. § 122.26(b)(14).
13. The EPA alleges that storm water runoff, snow melt runoff, and surface runoff leave the Timberlane Road Facility and flow into the on-site wetland, which discharges

into an intermittent stream, which flows into Crow Creek, which is a navigable-in-fact waterway, within the meaning of section 502(7) of the Act, 33 U.S.C § 1362(7).

14. The EPA alleges that storm water runoff, snow melt runoff, and surface runoff leave the Songer Road Facility and flow into two streams located on the property: Mud Creek, which is a navigable-in fact-waterway, and West Miller Coulee, which flows into Lower Crow Reservoir.
15. The runoff and drainage from the Facilities are “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
16. According to the EPA’s February 2021, “Industrial Storm Water Fact Sheet Series – Sector M: Automobile Salvage Yards,” EPA833F06028, https://www.epa.gov/sites/default/files/2015-10/documents/sector_m_autosalvage.pdf, pollutants associated with automobile salvage facilities include oil and grease, ethylene glycol, heavy metals, mercury, sulfuric acid, galvanized metals, petroleum hydrocarbons, total suspended solids (TSS), chlorinated solvents, acid/alkaline wastes, arsenic, organics, detergents, phosphorus, salts, gas/diesel fuel, and fuel additives.
17. The storm water discharged from the Facilities contains “pollutants” within the meaning of section 502(6) of the CWA, and 33 U.S.C. § 1362(6).
18. The EPA alleges that the storm water discharge from the Facilities is a “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
19. The EPA alleges that the storm water discharge from the Facilities is a discharge from a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

20. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
21. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA or states with approved NPDES programs may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.
22. More specifically, Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes that NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
23. Any person who discharges storm water associated with industrial activity to waters of the United States is required to seek NPDES permit coverage and to comply with the permit. 40 C.F.R. § 122.26(c).
24. The EPA directly implements the NPDES program in Indian country in Region 8.
25. Effective March 1, 2021, the EPA issued a NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP). The MSGP authorizes discharges of storm water associated with industrial activities, if done in compliance with its terms and conditions. Dischargers may apply to the EPA for authorization to discharge under the MSGP for coverage by submitting a Notice of Intent (NOI) for coverage to the EPA.
26. Part 1 of the MSGP describes how to obtain authorization under the MSGP.

27. Part 6 of the MSGP describes the requirement to develop a Storm Water Pollution Prevention Plan (SWPPP) prior to submitting the Notice of Intent (NOI).
28. On March 25, 2022, the EPA sent Timberlane a letter requesting information pursuant to section 308 of the Clean Water Act, 33 U.S.C. § 1318, particularly relating to controlling stormwater discharges, 40 C.F.R. § 122.26.
29. The requested information was due by April 24, 2022. No response was received from Timberlane.
30. On August 24, 2022, inspectors from the EPA conducted a NPDES storm water industrial inspection of the Timberlane Road Facility.
31. At the time of the EPA's August 24, 2022 inspection, Timberlane had not sought or obtained authorization from the EPA to discharge storm water from the Timberlane Road Facility under any CWA permit.
32. During the EPA's inspection, the inspectors observed lack of satisfactory storm water control measures at the Timberlane Road Facility; that 2.5 acres of the Timberlane Road Facility are located on a wetland; and that the Timberlane Road Facility has the potential to discharge stormwater into waters of the United States. Specifically, the Timberlane Road Facility has three areas in which pollutant-laden stormwater has the potential to leave the industrial site: the holding lot, via the wetland; the parts lot on the southern end; and through the access road on the southeast corner of the northern parts lot. The Timberlane Road Facility did not have a Stormwater Pollution Prevention Plan (SWPPP) at the time of the inspection.
33. The EPA alleges that Timberlane may have discharged pollutants from the Timberlane Road Facility without authorization by the MSGP, any other applicable

general permit, or any individual permit, in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

34. Discharges associated with industrial activity include discharges associated with facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015. 40 C.F.R. § 122.26(b)(14)(vi).
35. On January 3, 2023, the EPA provided a copy of the inspection report for the August 24, 2022 inspection to Timberlane. The inspection report identified findings and deficiencies found at the Timberlane Road Facility.

V. TERMS AND CONDITIONS

36. For the site located at 36970 Timberlane Road, Respondent shall:
 - a) No later than 30 days after the effective date of this Consent Order, apply to the EPA for authorization to discharge storm water from the Site, either under an individual discharge permit or under the March 1, 2021 MSGP referenced in paragraph 25, above. Concurrently with the application, Respondent shall provide the individual referenced in paragraph 39, below, with a copy of the application.
 - b) Immediately upon applying to the EPA for authorization to discharge storm water from the Site as specified in paragraph 36(a) above, comply fully with all requirements of the 2021 MSGP including, but not limited to, all requirements relating to developing and implementing a SWPPP, implementing all best management practices (BMPs) required by the 2021 MSGP and/or the SWPPP;
 - c) No later than 30 calendar days after the effective date of this Consent Order, Respondent shall submit to the EPA a SWPPP that fully complies with the requirements for SWPPPs set forth in the 2021 MSGP and the additional SWPPP requirements for automobile salvage facilities at Part 8.M.3;

- d) No later than 45 calendar days after the effective date of this Consent Order, Respondent shall provide photographic documentation of each of the BMPs installed at the Timberlane Road Facility location and the date of each BMP installation;
- e) After the effective date of this Consent Order, the Respondent shall submit quarterly reports to the EPA that contain copies of all inspection reports required pursuant to the MSGP prepared during the quarter and written and photographic documentation that all aspects of the SWPPP and MSGP are being implemented, including, but not limited to: (1) spill and leak prevention; (2) employee training; (3) storm water management; (4) inspection requirements; and (5) indicator monitoring. The first report is due January 15, 2025, and shall cover the time period from October 1, 2024, through December 31, 2024. Subsequent reports are due on April 15, 2025 (covering January 1, 2025 – March 31, 2025), July 15, 2025 (covering April 1, 2025 – June 30, 2025), October 15, 2025 (covering July 1, 2025 – September 30, 2025). The quarterly submissions shall continue for the duration of the Consent Order;
- f) The inspection reports must include:
 - i. The inspection date;
 - ii. Names and titles of personnel making the inspection;
 - iii. A summary of your inspection findings, covering at a minimum the observations you made in accordance with Part 3.1 and 8.M.4 of the 2021 MSGP, including any necessary maintenance or corrective actions;
 - iv. If you determined that it is unsafe to inspect a portion of your facility, you must describe the reason you found it to be unsafe and specify the locations to which this condition applies.

37. For the site located at the end of Songer Road, Respondent shall:

- a) Remove all salvage vehicles located on the property before June 1, 2025;

- b) If all vehicles are not removed from the site before June 1, 2025, Respondent shall:
 - i) No later than 30 days after June 1, 2025, Respondents shall apply to the EPA for authorization to discharge storm water from the Site, either under an individual discharge permit or under the March 1, 2021 MSGP referenced in paragraph 25, above. Concurrently with their application, Respondents shall provide the individual referenced in paragraph 39, below, with a copy of the application.
 - ii) Immediately upon applying to the EPA for authorization to discharge storm water from the Site as specified in paragraph 37.b.i above, comply fully with all requirements of the 2021 MSGP, including but not limited to all requirements relating to developing and implementing a SWPPP, implementing all best management practices (BMPs) required by the 2021 MSGP and/or the SWPPP.
 - iii) Submit to the EPA a SWPPP that fully complies with the requirements for SWPPPs set forth in the 2021 MSGP and the additional SWPPP requirements for automobile salvage facilities at Part 8.M.3 by July 1, 2025.
 - iv) No later than July 15, 2025, provide photographic documentation of each of the BMPs installed at the Songer Road Facility and the date of each BMP installation.
 - v) Submit quarterly reports to the EPA that contain copies of all inspection reports required pursuant to the MSGP prepared during the quarter and written and photographic documentation that all aspects of the SWPPP and MSGP are being implemented, including, but not limited to: (1) spill and leak prevention; (2) employee training; (3) storm water management; (4) inspection requirements; and (5) indicator monitoring. The first report is due October 15, 2025, and shall cover the time period from July 1, 2025, through September 30,

2025. Subsequent reports are due on January 15, 2026 (covering October 1, 2025 – December 31, 2025), April 15, 2026 (covering January 1, 2026 – March 31, 2026), July 15, 2026 (covering April 1, 2026 – June 30, 2026). The quarterly submissions shall continue for the duration of the Consent Order.

- c) The inspection reports must include:
 - i. The inspection date;
 - ii. Names and titles of personnel making the inspection;
 - iii. A summary of your inspection findings, covering at a minimum the observations you made in accordance with Part 3.1 and 8.M.4 of the 2021 MSGP, including any necessary maintenance or corrective actions;

If you determine that it is unsafe to inspect a portion of your facility, you must describe the reason it is unsafe and specify the locations at which this condition applies.

38. All reports and information required by this Consent Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R § 122.22(a)(3) of a principal executive officer or ranking elected official:

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. The Respondent shall send all written notices, documentation, and reports required by this Consent Order to the following:

Lisa-kay Prideaux (8MO)
U.S. EPA Region 8
Senator Max Sieben Baucus Federal Building
10 West 15th Street
Helena, Montana 59626
Prideaux.lisakay@epa.gov

40. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.
41. Without any admission of liability, the Respondent consents to issuance of this Consent Order and agrees to abide by its terms. The Respondent admits the facts stipulated in the consent agreement. Respondent reserves the right to defend itself in any action to enforce this Consent Order.
42. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review the Respondent may have concerning any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review of the factual and legal allegations under the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. The Respondent further agrees not to challenge the jurisdiction of the EPA in any proceeding to enforce this Consent Order or in any action taken pursuant to this Consent Order.
43. This Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the

assessment of civil penalties of up to \$66,712 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

44. Nothing in this Consent Order shall be construed to prevent the EPA from instituting further action under Section 309 of the Act for the violations cited in this Consent Order or to relieve the Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.
45. If EPA finds that any information in this Consent Order provided by the Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.
46. This Consent Order shall be effective on the date it is filed by the hearing clerk.
47. The EPA and the Respondent consent to service of the Consent Order by e-mail at the following valid e-mail addresses: adams.colleen@epa.gov (for Complainant), and forspdnyahoo.com (for Respondent).

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
Complainant

Date: September 19, 2024

By: _____
Tiffany Cantor, Acting Manager
Water Enforcement Branch
Enforcement and Compliance Assurance Division

TIMBERLANE AUTO, LLC
Respondent

Date: Sept 19, 2024

By: Neal Talsma
Neal Talsma