

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
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)
)
Langley Recycling, Inc.)
3557 Stadium Drive)
Kansas City, Missouri 64129)
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

Docket No. CWA-07-2008-0014

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Langley Recycling, Inc., (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division of EPA Region VII.

4. Respondent is Langley Recycling, Inc., a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

5. 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.

6. 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.

7. 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 storm water. Section 402(p) of the CWA, requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

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

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

10. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity”, in part, as “facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

11. The Missouri Department of Natural Resources (MDNR) is the state agency with authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

12. The MDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R60A on May 30, 2003. The permit governs storm water discharges associated with motor vehicle salvage yards and scrap metal recycling operations.

Factual Background

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

14. At all times relevant to this action, Respondent was the owner and/or operator of a automobile junkyard or salvage yard known as Langley Recycling, located at 3557 Stadium Drive, Kansas City, Missouri (the Site) with a SIC code of 5015.

15. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes directly into the Blue River. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

16. Storm water contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

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

19. Storm water 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).

20. 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.

21. Respondent applied for and was issued NPDES permit coverage under the general permit described in paragraph 10 above. MDNR assigned Respondent Permit No. MO-R60A008, which was issued on July 11, 2003.

22. On February 12, 2007 and February 23, 2007, EPA 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 storm water at the site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Comply with Narrative Water Quality-Based Effluent Limitations or Conditions

23. The facts stated in paragraphs 13 through 22 above are herein incorporated.

24. Paragraph 1 of the Requirements section of the Respondent's permit states that discharges shall not cause violations of the general criteria in the Water Quality Standards 10 CSR 20-7.031(3). Including, but not limited to the following criteria. This shall include sheens on the water from oil or greases.

25. The inspection referenced in paragraph 20 above, revealed that Respondent failed to comply with narrative water quality-based effluent limitations. Inspectors noted a visible amount of sheen from oil and grease on the runoff waters exiting the facility. This sheen remained visible on the runoff waters to the rip-rap on the bank of the river.

26. Respondent's failure to comply with narrative water quality-based effluent limitations or conditions is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 2

Failure to Implement Runoff Control Measures

27. The facts stated in paragraphs 13 through 22 above are herein incorporated.

28. Paragraph 3 of the Requirements section of Respondent's permit requires runoff or run on control measures such as temporary diversion dikes or berms, permanent diversion dikes or berms, right-of-way or perimeter diversion devices, retention and detention basins, sediment traps and barriers.

29. The inspection referenced in paragraph 20 above, revealed that Respondent's pollution control measures, including oil "socks" or barriers were poorly maintained, ripped open and the contents washed away.

30. Respondent's failure to implement runoff pollution control measures is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

CONSENT AGREEMENT

31. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

32. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

33. Respondent neither admits nor denies the factual allegations set forth above.

34. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

35. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

36. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Water Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the Clean Water Act or other applicable law.

37. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 402(p) of the Clean Water Act, 33 U.S.C. §1342(p), and all regulations promulgated thereunder.

38. The effect of settlement described in paragraph 36 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 37, above, of this Consent Agreement and Final Order.

39. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order

40. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

41. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty Thousand Nine Hundred Fifty dollars (\$40,950), within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference docket number CAA-07-2008-0014.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

Sarah Thibos LaBoda
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

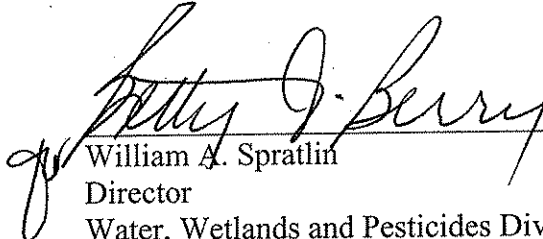
8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

01/14/08

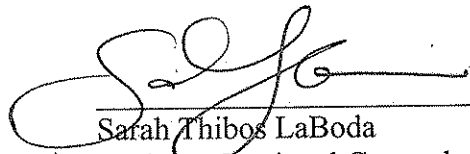
Date



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

1/14/08

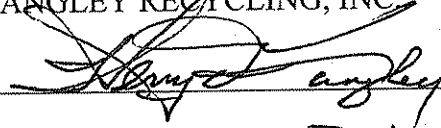
Date



Sarah Thibos LaBoda
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
LANGLEY RECYCLING, INC.

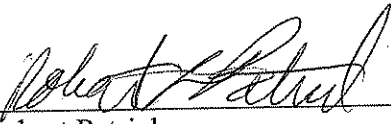
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Date



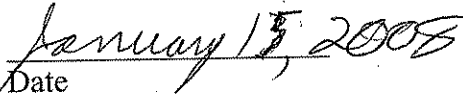
Name (Print) HENRY D LANGLEY

Title Chairman/Sec Treasurer

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer



Date

IN THE MATTER OF Langley Recycling, Inc., Respondent
Docket No. CWA-07-2008-0014

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Sarah Thibos LaBoda
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

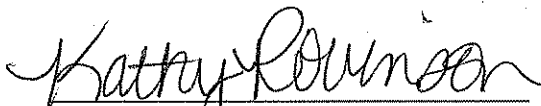
Ms. Jessica Merrigan
Lathrop & Gage. L.C.
2345 Grand Blvd., Suite 2800
Kansas City, Missouri 64108

And via first class mail to:

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Mr. Karl Fett
Missouri Dept. of Natural Resources
Kansas City Regional Office
500 NE Colbern Rd
Lee's Summit, Missouri 64086-4710

1/15/08
Dated


Kathy Robinson
Hearing Clerk, Region 7