

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

STATES INDUSTRIES, LLC

Eugene, Oregon

Respondent.

DOCKET NO. CWA-10-2021-0124

CONSENT AGREEMENT

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

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,584 per day for each day during which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg. 83820 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A)

and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and States Industries, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement 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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as

authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, “dredged spoil, biological materials, rock, sand, chemical wastes, and industrial wastes.”

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to, “any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.”

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the alleged violations, “waters of the United States” was defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2 (1993).

3.7. CWA Section 502(5), 33 U.S.C. § 1362(5) defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”

3.8. CWA Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), requires an NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.9. “Stormwater discharge associated with industrial activity” is defined to include “the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial

plant,” including the discharge from facilities classified under Standard Industrial Classification (SIC) code 2435 (Hardwood Veneer and Plywood). 40 C.F.R. § 122.26(b)(14).

3.10. CWA Section 402(b) authorizes EPA to delegate NPDES permitting authority to authorized states. 33 U.S.C. § 1342(b); 40 C.F.R. Part 123. The State of Oregon, through the Department of Environmental Quality (ODEQ) is authorized to administer the NPDES permitting program for stormwater discharges associated with industrial activity in Oregon.

3.11. On August 1, 2017, ODEQ issued the NPDES Stormwater Discharge General Permit No. 1200-Z (General Permit). The Permit became effective on August 1, 2017. It was reissued on October 22, 2018 and expires on July 31, 2022.

3.12. The General Permit authorizes covered operators to discharge stormwater and non-stormwater discharges specifically authorized by the permit in conformance with all the requirements, limitations, and conditions set forth therein.

General Allegations

3.13. Respondent is a limited liability company licensed to do business in the State of Oregon and is therefore a “person” within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

3.14. At all times relevant to this action, Respondent owned and operated a manufacturing facility located at 29545 East Enid Road in Eugene, Oregon (Facility).

3.15. At all times relevant to this Action, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility in accordance with the General Permit. Respondent obtained permit coverage under the General Permit, ODEQ permit file number ORR221271 (Permit) on September 13, 2017. ODEQ notified Respondent of the General Permit’s reissuance and modified monitoring requirements on October 24, 2018.

3.16. Respondent manufactures veneer plywood products, particleboard, and medium-density fiberboard at the Facility. These activities are categorized under SIC code 2435 (Hardwood Veneer and Plywood).

3.17. Respondent discharges stormwater from twelve identified discharge points (Outfalls 001-012) at the Facility. Outfalls 001-012 are each a “point source” as defined under CWA Section 502(14), 33 U.S.C. § 1362(14).

3.18. Respondent discharges stormwater from certain outfalls into a series of drainage ditches that discharge into the A-1 Channel. The A-1 Channel flows to Amazon Creek, which is a perennial tributary of the Long Tom River. The Long Tom River is a perennial tributary to the Willamette River. The Willamette River is a navigable waterway under Section 10 of the Rivers and Harbors Act (RHA), 33 U.S.C. § 403. Waters regulated under the RHA are a subset of traditional navigable waters and therefore are “waters of the United States.” The Facility therefore discharges into “waters of the United States” as defined under Section 502(7) of the Act, 33 U.S.C. § 1362(7), and the regulations applicable at the time the violations occurred.

3.19. The Facility’s stormwater contains “pollutants” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

3.20. Accordingly, the Facility’s stormwater discharges are “discharges of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).

3.21. Respondent has discharged pollutants from a point source into navigable waters within the meaning of the CWA sections identified above.

Violations

3.22. The General Permit establishes, *inter alia*, authorized and prohibited discharges, inspection and monitoring requirements, and sector-specific requirements for stormwater discharges.

3.23. On January 29, 2020, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent's compliance with the Permit and the CWA. As part of the inspection, EPA reviewed Respondent's Stormwater Pollution Control Plan (SWPCP), Tier II corrective action reports, discharge monitoring reports (DMRs), analytical records, monthly inspection records, and annual training records.

3.24. As described below, on at least January 29, 2020, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and certain conditions and/or limitations of the Permit.

Count 1: Failure to Properly Operate and/or Maintain Systems of Treatment and Control

3.25. Schedule F.B.1 of the Permit requires Respondent to "properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit."

Schedule A.1.i of the Permit requires Respondent to "clean, maintain and repair all control measures, including stormwater structures, catch basins, and treatment facilities to ensure effective operation as designed and in a manner that prevents the discharge of pollution."

Schedule A.3.d of the Permit requires Respondent to "install, implement and maintain the control measures in accordance with good engineering practices and manufacturers' specifications."

3.26. Respondent installed downspout filters as a control measure to address the total zinc exceedances at the Facility in order to achieve compliance with the conditions of the Permit.

However, because the downspout filters had been removed for maintenance during a period of

precipitation, Respondent failed to properly operate the downspout filters, in violation of Schedule F.B.1. Respondent's failure to maintain the downspout filters was not in accordance with good engineering practices, in violation of Schedule A.3.d, and Respondent failed to operate, maintain, and repair its control measure as designed and in a manner to prevent the discharge of pollution, in violation of Schedule A.1.i.

Count 2: Failure to Cover Dumpsters Exposed to Precipitation

3.27. Schedule A.1.c of the Permit requires Respondent to "cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants."

3.28. Respondent failed to cover outside dumpsters exposed to precipitation located in multiple drainage basins at the Facility, in violation of Schedule A.1.c of the Permit.

Count 3: Failure to Monitor or Adequately Describe Outfall Designation in the SWPCP

3.29. Schedule A.7.b provides the components that the operator must include in the SWPCP. Schedule A.7.b.x of the Permit requires Respondent to provide "the identification of each discharge point and the location(s) where stormwater monitoring will occur as required by Schedule B.2. The monitoring location must also be labeled in the SWPCP as 'monitoring location.' Existing discharge points excluded from monitoring must include a description of the discharge point(s) and data or analysis supporting that the discharge point(s) are substantially similar as described in Schedule B.2.c.ii of this permit."

3.30. On at least January 29, 2020, Respondent was not monitoring Outfall 006. Respondent's SWPCP lists Outfall 006 as a discharge point and lacks any support that Outfall 006 is substantially similar to other monitored outfalls. Respondent failed to adequately describe

in the Facility's SWPCP why Outfall 006 is not being monitored or why the outfall is substantially similar to other monitored outfalls, in violation of Schedule A.7.b.x of the Permit.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account "the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require." After considering all these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$10,500.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be 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, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Chris Gebhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Gebhardt.Chris@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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, 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.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA

Section 309(g)(9), 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, 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 Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. This Consent Agreement and the Final Order constitute a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of this Consent Agreement.

4.12. Except as described in Paragraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to

appeal the Final Order.


4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

8/13/2021

FOR RESPONDENT:



ANDREW WEINER
Vice President - Technology
States Industries, LLC

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI Digitally signed by
EDWARD KOWALSKI
Date: 2021.09.24
12:07:18 -07'00'

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

STATES INDUSTRIES, LLC

Eugene, Oregon

Respondent.

DOCKET NO. CWA-10-2021-0124

FINAL ORDER

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

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2021.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2021.09.28
11:45:16 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: States Industries, LLC, Docket No.: CWA-10-2021-0124**, was filed with the Regional Hearing Clerk and 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 emailed to:

Caitlin Soden, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Office of Regional Counsel
1200 Sixth Avenue, Suite 155, Mail Stop ORC-11-C07
Seattle, Washington 98101
(206) 553-6635
Soden.Caitlin@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was emailed to:

Andrew Weiner
States Industries, LLC
29545 Enid Road East
PO Box 41150
Eugene, OR 97404
aweiner@statesind.com

Laura Kerr
Attorney, Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Laura.Kerr@stoel.com

DATED this _____ day of _____, 2021.

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.09.29
10:12:48 -07'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10