

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

| | | |
|---|---|-----------------------------------|
| IN THE MATTER OF |) | |
| |) | |
| Hess Salvage, Inc. |) | Docket No. CWA-07-2014-0045 |
| 402 Bridge Street |) | |
| Clay Center, Kansas 67432 |) | CONSENT AGREEMENT/ FINAL ORDER |
| |) | |
| Respondent |) | |
| |) | |
| Proceedings under Section 309(g) of the |) | |
| Clean Water Act, 33 U.S.C. § 1319(g) |) | |
| |) | |

The United States Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and Hess Salvage, 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).

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 (“CA/FO”) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the

Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

4. Respondent is Hess Salvage, Inc., a corporation under the laws of Kansas and authorized to conduct business in the State of Kansas. Respondent owns and operates an auto salvage facility located at 402 Bridge Street in Clay Center, Kansas 67432.

Statutory and Regulatory Framework

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

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 CWA, 33 U.S.C. § 1362.

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

8. 40 C.F.R. § 122.26(b)(14) defines a stormwater discharge that is “associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 20, which includes establishments primarily engaged in manufacturing prepared meats. *See* 40 C.F.R. § 122.26(b)(14)(xi).

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

10. 40 C.F.R. §§ 122.26(a)(1)(ii), 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.

11. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of CWA. EPA maintains concurrent enforcement authority with authorized states for violations of CWA.

12. On September 1, 2006, KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) for the discharge of stormwater under the NPDES. The General Permit governs stormwater discharges associated with industrial activity, addressing categories of facilities generally involved in materials handling, manufacturing, transportation, or production. KDHE reissued the General Permit, which is effective from November 1, 2011, through October 31, 2016. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”).

FACTUAL BACKGROUND

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

14. At all times relevant to this action, Respondent was the owner and operator of an auto salvage facility (“Site”), located at 402 Bridge Street in Clay Center, Kansas 67432.

15. Respondent’s Site comprises approximately eight acres.

16. The Site is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of CWA, 33 U.S.C. § 1362.

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

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

19. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of CWA, 33 U.S.C. § 1342.

20. KDHE issued NPDES Permit No.#G-LR05-0001 to Hess Salvage on March 6, 2007. KDHE re-issued the NPDES permit on November 1, 2011. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Site.

21. On June 18, 2013, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a) inspected the Site to determine Respondent’s compliance with its NPDES permit and the CWA.

ALLEGED VIOLATIONS

Count 1

Failure to Develop and Implement a Stormwater Pollution Prevention Plan

22. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

23. Section 2.1 of Respondent's NPDES permit states the permittee shall develop a stormwater pollution prevention plan (SWPPP) that is specific to the industrial activity and site characteristics occurring at the permitted location described in the Notice of Intent (NOI). The permittee shall fully implement and periodically review, and update as necessary, the provisions of their SWPPP, as required under this part, as a condition of this general permit. The permittee shall develop and implement a SWPPP within ten months of KDHE's authorization of the permittee's Notice of Intent form.

24. The facility's original NOI was submitted by the Respondent to KDHE on March 6, 2002.

24. The EPA inspection referenced in Paragraph 21 found that Respondent had not developed and implemented a SWPPP at the time of the inspection.

25. Respondent's alleged failure to develop an adequate SWPPP is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Properly Operate and Maintain the Facility

26. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

27. Section 4.1 of the Standard Conditions of Respondent's NPDES permit states that the permittee shall at all times properly operate and maintain all facilities.

28. During the EPA inspection referenced in Paragraph 21, the inspector observed large amounts of scrap metal along the stream bank and in the streambed of Huntress Creek.

29. Respondent's alleged failure to properly operate and maintain the facility is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

30. Based on the foregoing Alleged Violations, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order assessing an

administrative penalty against the Respondent for the violations cited above, in the amount of \$15,000.

CONSENT AGREEMENT

31. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

32. Respondent admits the jurisdictional allegations of this CA/FO 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 CA/FO.

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 CA/FO.

35. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

36. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

37. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

38. This CA/FO addresses all civil and administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of CWA or any other applicable law.

39. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Site is in compliance with Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

40. The effect of the settlement described in Paragraph 38 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 39 of this CA/FO.

41. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$15,000 as set forth in Paragraph 1 of the Final Order.

42. Respondent understands that failure to pay any portion of the civil penalty on the proper due date may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

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

1. Respondent shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000) within 30 days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

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

This payment shall reference docket number CWA-07-2014-0045.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO 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 CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors, 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 CA/FO.

General Provisions

5. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of 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 CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

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 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 CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

4-9-15

Date



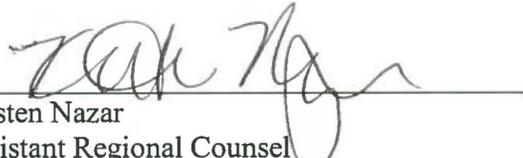
Karen A. Flournoy

Director

Water, Wetlands and Pesticides Division

4/7/15

Date



Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
HESS SALVAGE, INC.

02/16/2015

Date

A handwritten signature in blue ink, appearing to read "Nicholas H. Jefferson", is written over a horizontal line.

Name (Print) Nicholas H. Jefferson

Title Attorney of Record - Hess Salvage, Inc.

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

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

4-23-15
Date

IN THE MATTER OF Hess Salvage, Inc., Respondent
Docket No. CWA-07-2014-0045

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to:

Nicholas H. Jefferson
Attorney of Record
Hess Salvage, Inc.
402 Bridge Street
Clay Center, Kansas 67432

Dated: 4/23/15



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7