

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)
)
)
)
Weaver's Cove Industrial Park, LLC)
One New Street)
Fall River, MA 02720)
)
Respondent)
)
)
Proceeding under Section 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

DOCKET NO: CWA-01-2022-0015

**ADMINISTRATIVE CONSENT
AGREEMENT AND FINAL ORDER** 9/13/22

Received by
EPA Region 1
Hearing Clerk

1. The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 1 ("EPA") enters into this Consent Agreement and Final Order ("CAFO") with Weaver's Cove Industrial Park, LLC ("WCIP" or "Respondent"), under authority Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with applicable delegations and 40 C.F.R. §§ 22.13(b) and 22.18 of EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits* ("Consolidated Rules"), for the purpose of resolving alleged violations of a federal National Pollution Discharge Elimination System ("NPDES") permit and Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a).

2. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts of this action.



I. STATUTORY AND REGULATORY AUTHORITY

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership, [or] association."

6. Section 502(12) of the CWA, 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."

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, garbage, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA,

33 U.S.C. § 1342.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

12. 40 C.F.R. § 122.26(b)(13) defines “stormwater” to include “stormwater runoff, snow melt runoff, and surface runoff and drainage.”

13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

14. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

15. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

16. 40 C.F.R. § 122.26(b)(14) specifies that the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among other things, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Material handling activities include storage, loading and unloading,

transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

II. GENERAL ALLEGATIONS

17. Respondent is the owner of approximately 50 acres of land on the banks of the Taunton River located at One New Street in Fall River, Massachusetts (the "Facility"). From the 1920s until the late 1990s, Shell Oil used the Facility for bulk fuel storage operations. Petroleum products were removed from all of the storage tanks on-site and all but eight of the tanks were removed from the property. Since 1975, Shell Oil has conducted groundwater remediation on the property.

18. The Facility is characterized primarily by sand and gravel around the previous and existing tank farm areas, vegetation around most of the perimeter of the Facility, and paved areas near the entrance to the Facility where the offices are located. Since the transfer of the Facility to the Respondent, other than the ground water remediation activities and deconstruction of three storage tanks, there have not been active operations at the Facility.

19. On March 25, 2013, EPA issued NPDES Permit No. MA0004871 ("Permit") to Weaver's Cove Energy, LLC, to discharge stormwater from the Facility to the Taunton River. The Facility has two stormwater outfalls (Outfalls 001 and 004).

20. Following a transfer of Facility ownership from Weaver's Cove Energy, LLC to Respondent, on February 26, 2016, EPA authorized Respondent to discharge stormwater through Outfalls 001 and 004 from the Facility to the Taunton River pursuant to the Permit. The Permit expiration date was May 31, 2018.

21. Pursuant to 5 U.S.C. § 558(c) and 40 C.F.R. Part 122.6, the Permit is administratively continued.

22. The Permit contains effluent limitations, monitoring requirements, terms, and conditions applicable to discharges of stormwater from the Facility.

23. The Permit requires that Respondent sample stormwater discharges from Outfalls 001 and 004 for specified effluent characteristics. The Permit requires that Respondent sample on a quarterly or annual basis and in accordance with specified monitoring requirements. The Permit requires that Respondent submit to EPA monitoring data in discharge monitoring reports (“DMRs”) no later than the 15th day of the month following the completed reporting period.

24. Stormwater discharging through Outfall 001 first flows through an oil/water separator (“O/W Separator”). The Permit requires that Respondent inspect, maintain, and operate the O/W Separator in order to minimize the discharge of oil and solids to assure that the effluent limitations and conditions of the Permit are met.

25. The Permit requires that at least once per month Respondent inspect the drainage system line to the O/W Separator and Outfall 004 for dry weather flow, record the inspection, and record specified information regarding any observed dry weather flow.

26. The Permit requires that Respondent prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”) designed to reduce, or prevent, the discharge of pollutants in stormwater to the Taunton River. The Permit requires that all areas identified in the SWPPP shall be inspected at least annually. Records documenting significant observations and action taken during and after inspections must be retained as part of the SWPPP for a minimum of five years.

27. The Permit requires that Respondent certify at least annually that the previous year’s inspections and maintenance activities were conducted, results were recorded, records were maintained, and that the facility is in compliance with the SWPPP. The Permit requires that



Respondent keep a copy of the current SWPPP and all SWPPP certifications (initial certification, re-certifications, and annual certifications) signed during the effective period of the Permit at the Facility and make them available for inspection by EPA and MassDEP.

Findings of Violation

28. Respondent is a Massachusetts corporation with its principal office located at 10 Post Office Square, Suite 970N, Boston, Massachusetts, 02109.

29. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

30. The Taunton River is a water of the United States and, thereby, a “navigable water,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

31. From on or about February 26, 2016, through the present, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from Outfalls 001 and 004 into the Taunton River.

Count 1: Failure to Sample in Violation of the Permit

32. Paragraphs 1 through 31, above, are incorporated by reference as if fully set forth herein.

33. Since February 26, 2016, through the present, on a quarterly or annual basis as specified by the Permit, the Permit has required that Respondent sample effluent before discharge to the Taunton River in compliance with monitoring requirements specified in the Permit.

34. During 14 quarters between May of 2017 and January of 2021, Respondent failed to conduct sampling required by the Permit.

35. Respondent failed to comply with the Permit as described in Paragraph 34.

36. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from May of 2017 through January of 2021.

Count 2: Late Submittal of DMRs in Violation of the Permit

37. Paragraphs 1 through 36, above, are incorporated by reference as if fully set forth herein.

38. Since April of 2016 through the present, the Permit has required Respondent to submit to EPA monitoring data in DMRs no later than the 15th day of the month following the completed reporting period.

39. For 14 quarters between July of 2017 and January of 2021, Respondent failed to timely submit DMRs as required by the Permit.

40. Respondent failed to comply with the Permit as described in Paragraph 39.

41. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from July 15, 2017, through January 15, 2021.

Count 3: Failure to Maintain the O/W Separator in Violation of the Permit

42. Paragraphs 1 through 41, above, are incorporated by reference as if fully set forth herein.

43. On November 20, 2020, authorized representatives of EPA inspected the Facility for compliance with the Permit (the "Inspection"). During the Inspection, the EPA authorized representatives observed that the O/W Separator was overgrown with vegetation and did not



appear to be properly maintained.

44. Respondent failed to comply with the Permit requirements related to operation and maintenance of the O/W Separator.

45. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) on November 20, 2020.

Count 4: Failure to Update SWPPP in Violation of the Permit

46. Paragraphs 1 through 45, above, are incorporated by reference as if fully set forth herein.

47. As of February 25, 2016, the Permit required that Respondent prepare and implement a SWPPP designed to reduce, or prevent, the discharge of pollutants in stormwater to the Taunton River. The Permit further required that Respondent amend and update the SWPPP within 14 days for any changes at the Facility affecting the SWPPP.

48. Respondent's SWPPP was dated August 2013 and was not updated until December 2020.

49. Respondent failed to comply with the Permit requirement to have an updated SWPPP.

50. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from May of 2017 through November of 2020.

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Count 5: Failure to Make SWPPP Available for Inspection by EPA in Violation of the Permit

51. Paragraphs 1 through 50, above, are incorporated by reference as if fully set forth herein.

52. During the Inspection and in writing on three separate occasions after the Inspection, EPA requested that Respondent provide the SWPPP to EPA. Respondent did not provide the SWPPP to EPA until October 18, 2021 (11 months after the Inspection).

53. Respondent failed to comply with the Permit requirement to make its SWPPP available to EPA.

54. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from November of 2020 through October of 2021.

Count 6: Failure to Conduct Inspections in Violation of the Permit

55. Paragraphs 1 through 54, above, are incorporated by reference as if fully set forth herein.

56. The Permit requires that at least once per month the Respondent inspect the drainage system that discharges to the O/W Separator associated with Outfall 001 for any dry weather flow. The Permit also requires that at least one time per month the Respondent inspect Outfall 004 for dry weather flow.

57. The Permit requires that all areas identified in the SWPPP shall be inspected at least on an annual basis.

58. Respondent failed to conduct inspections required by the Permit between May 2017 and December 2020.



59. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from May of 2017 through December of 2020.

Count 7: Failure to Annually Certify Inspections and Maintenance in Violation of the Permit

60. Paragraphs 1 through 59, above, are incorporated by reference as if fully set forth herein.

61. The SWPPP provided by Respondent contained no certifications required by the Permit including annual certifications that inspections and maintenance activities were conducted.

62. By discharging stormwater from outfalls into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from May of 2017 through December of 2020.

III. TERMS OF SETTLEMENT

63. Respondent certifies that it is operating the Facility in compliance with the Permit and the CWA. Respondent further certifies that it will continue to operate the Facility in compliance with the Permit and the CWA.

64. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

65. Respondent neither admits nor denies the specific factual or other non-jurisdictional allegations contained in Section II above.



Waiver of Rights

66. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty


67. EPA proposes, and Respondent consents to, the assessment of a civil penalty of **\$47,500** for all violations contained in this CAFO.

Payment Terms

68. In agreeing to the penalty described in Paragraph 67 above, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

69. Respondent shall pay a total penalty of **\$47,500** due within 10 days of the date this CAFO becomes final.

70. Respondent shall pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and every payment shall reference “*In the Matter of: Weaver’s Cove Industrial Park, LLC*, Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action “Docket No. CWA-01-2022-0015.” Within 24 hours of payment of the EPA Penalty, proof of payment shall be sent by e-mail and first class or commercial delivery service to Wanda I. Santiago, Regional Hearing Clerk, at U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-6), Boston, MA 02109-3912, and R1_Hearing_Clerk_Filings@epa.gov, and Kathleen Woodward, Senior Enforcement Counsel, U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-3), Boston, MA 02109-3912, and



Woodward.kathleen@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CWA-01-2022-0015”).

71. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Consent Agreement becomes final pursuant to the attached Final Order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney’s fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person’s penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

72. The provisions of this CAFO shall apply to and be binding on Respondent, their officers, directors, agents, servants, employees, successors, and assigns.

73. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local

law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

74. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein.

75. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

76. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

77. Except as provided in Paragraph 76 above, the Parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

78. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following

A handwritten signature in black ink, appearing to be a stylized 'W' or similar character, located on the right side of the page.

addresses:

William Thibeault, Manager
WJT@TDEV1.Net

And

Richard A. Nylén, Jr., Esq.
RNylén@ldnllp.com

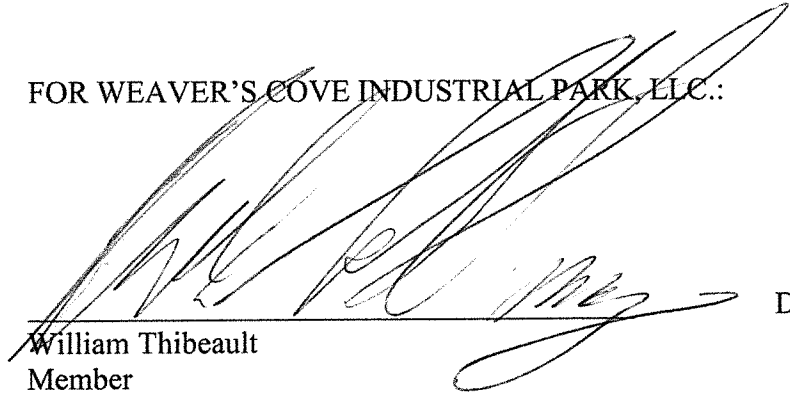
Respondent understands that these e-mail addresses may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

79. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon written agreement of the Parties, and approval of a Regional Administrator or his or her properly authorized delegate.

80. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

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FOR WEAVER'S COVE INDUSTRIAL PARK, LLC.:



Date: 7-26

William Thibeault
Member
Weaver's Cove Industrial Park, LLC



FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Dated by electronic signature

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FINAL ORDER

1. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, 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).

2. The foregoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) and of the CWA, 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. Part 22.

Dated by electronic signature

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1