



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 JAN 26 AM 9:39

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARINGS CLERK

DOCKET NO.: CWA-08-2012-0005

IN THE MATTER OF:)

LESTER McELROY)
d/b/a ADAM'S WRECKING II)
30586 E. Highway 50)
LaJunta, Colorado)

FINAL ORDER

RESPONDENT)

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 26th DAY OF January, 2012.

Elyana R. Sutin
Regional Judicial Officer

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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HEARINGS CLERK

In the Matter of:)	COMBINED
)	COMPLAINT AND
Lester McElroy, Doing Business As)	CONSENT AGREEMENT
Adam's Wrecking II)	
30586 E. Highway 50)	
La Junta, Colorado)	
)	Docket No. CWA-08-2012-0005
Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Lester McElroy (Respondent), doing business as Adam's Wrecking II, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. EPA has jurisdiction over these matters pursuant to sections 308 and 309(a) of the Federal Water Pollution Control Act (Clean Water Act), as amended. 33 U.S.C. §§ 1318 and 1319(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits" (Rules of Practice), 40 C.F.R. part 22, a copy of which has been provided to Respondent.
2. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations. Respondent consents to the assessment of the civil penalty and waives any right to a hearing or appeal before any tribunal and to contest any issue of law or fact set forth herein.
4. Complainant asserts that settlement of this matter is in the public interest, and the parties agree that entry of this CCCA without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

5. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's employees, agents, successors and assigns. Any change in ownership of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
6. This CCCA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATIONS

7. Respondent is an individual and therefore a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
8. In order to restore and maintain the integrity of the nation's waters, § 301(a) of the Act, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of any pollutant by any person into waters of the United States except in compliance with a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.
9. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions. "Navigable waters" means the waters of the United States, 33 U.S.C. § 1362(7).
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires an NPDES permit for storm water discharges associated with industrial activities.
11. At all times relevant to this CCCA, Respondent has operated Adam's Wrecking II as a sole proprietorship.
12. Respondent owns and/or is engaged in receiving salvage vehicles and selling used motor vehicle parts from those vehicles at Adam's Wrecking II located at 30586 E. Highway 50 in La Junta, Colorado (Site), and is therefore an "owner or operator" of a facility subject to regulation under the NPDES program as defined in the regulations. 40 C.F.R. § 122.2. Respondent is engaged in an "industrial activity" as defined by 40 C.F.R. § 122.26(b)(14).
13. The Colorado Department of Public Health and Environment (CDPHE) was approved by EPA to administer the NPDES program on March 27, 1975. 40 Fed. Reg. 16713, April 14, 1975. A permit issued by CDPHE under Colorado's EPA-authorized NPDES program is known as a Colorado Discharge Permit System (CDPS) permit.
14. Respondent is identified as an automobile recycler (SIC code 5015), under the CDPS general permit for Stormwater Discharges Associated With the Recycling Industry issued by CDPHE on December 1, 2006.

15. Respondent has day-to-day responsibility for operations at the Site.
16. The Site encompasses approximately 7 acres.
17. On March 10, 2011, inspectors from EPA conducted an NPDES storm water inspection of the Site.
18. At the time of the inspection, the Respondent had not sought or obtained authorization from CDPHE to discharge storm water from the Site under the applicable general permit or any individual permit.
19. Inspectors observed evidence and obtained confirmation from Respondent that storm water has run off the Site.
20. The runoff and drainage from the Site are "storm water" as defined in 40 C.F.R. § 122.26(b)(13).
21. Storm water contains "pollutants" as defined by § 502(6) of the Act, 33 U.S.C. § 1362(6).
22. The storm water had run off the Site at the northeast corner under the fence and through a hand dug drain into a roadside stormwater conveyance owned by the Colorado Department of Transportation (CDOT). The CDOT stormwater conveyance continues for approximately 600 feet east beyond the point of discharge from the Site and flows into an unnamed arroyo, which then continues approximately 0.75 miles to the northeast to the Arkansas River.
23. Storm water, snow melt, surface drainage and runoff water have been leaving the site and have flowed into the Arkansas River.
24. The Arkansas River is a "navigable water" as defined by § 502(7) of the Act, 33 U.S.C. § 1562(7), and a "water of the United States" as defined by 40 C.F.R. § 122.2.
25. The storm water discharge from the Site is a "discharge of a pollutant" as defined by § 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
26. The storm water discharge from the Site is a discharge from a "point source" as that term is defined in § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
27. On June 28, 2011, Respondent submitted a notice of intent to CDPHE indicating Respondent's intent to have industrial storm water discharged from the Site covered by the Permit. Additional information was provided to CDPHE on July 19, 2011. As of the date of lodging of this CCCA, Respondent has not yet been issued a permit certification authorizing Respondent to discharge storm water at the Site in accordance with the requirements of the Permit.

C. CIVIL PENALTY

28. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the EPA to assess a civil administrative penalty for any violation of various provisions of the Act, including but not limited to §§ 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, and for any violation of a condition or limitation of a permit issued under § 402 of the Act, 33 U.S.C. § 1342. The amount of the penalty that EPA can assess is up to \$11,000 per day for each day during which a violation occurred from March 16, 2004, through January 12, 2009, and up to \$16,000 per day for each day after January 12, 2009, during which a violation continues. For violations from March 16, 2004, through January 12, 2009, the maximum total penalty is \$157,500. For violations after January 12, 2009, the maximum is \$177,500. These amounts have been adjusted for inflation by 40 C.F.R. part 19.
29. Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), requires EPA to take into account the following factors in assessing a civil administrative penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

Nature, Circumstances, Extent, and Gravity of Violations

30. As mentioned above, EPA observed evidence and obtained confirmation from Respondent that storm water has run off the Site, which discharged to the Arkansas River via a CDOT stormwater conveyance and an unnamed arroyo. Respondent had not sought or obtained a permit to discharge pollutants to a water of the United States. Best management practices that would have minimized pollutant discharges were not being implemented at the Site. Had Respondent obtained and complied with a storm water discharge permit, it would have controlled its discharges and minimized pollutant discharges.
31. The Site is an automobile salvage yard, which is a regulated industrial activity. According to the December 2006, "Industrial Storm Water Fact Sheet Series – Sector M: Automobile Salvage Yards," EPA-833-F-06-028, the potential pollutants of concern from automobile salvage yards include oil and grease, ethylene glycol, galvanized metals, heavy metals, mercury, sulfuric acid, petroleum hydrocarbons, total suspended solids, organics, chlorinated solvents, acid/alkaline wastes, detergents, phosphorus, salts, and fuel.
32. The section of the Arkansas River where the discharge enters is in segment 1b of the Lower Arkansas River Basin (5 C.C.R. 1002-32), which is designated by CDPHE as having uses including Class 2 - warm water aquatic life (not capable of sustaining a wide variety of warm water biota), recreation with existing primary contact, water supply with sufficient drinking water quality after standard treatment, and agricultural.

33. EPA and states with authorized NPDES programs rely on permits to implement the controls needed to prevent water pollution. Respondent's failure to seek permit authorization jeopardizes the integrity of EPA's and CDPHE's programs to control storm water pollution.

Prior Compliance History

34. This complaint is the first enforcement action EPA Region 8 has issued to Respondent regarding noncompliance with the storm water requirements. CDPHE has not issued any enforcement actions to Respondent regarding noncompliance with the storm water requirements

Degree of Culpability

35. In 1990, EPA promulgated Phase I of its storm water program (55 Fed. Reg. 47990-48091, November 16, 1990). Phase I required NPDES permit authorization for storm water discharges from ten categories of industrial activities, including the sixth category, "Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards" (55 Fed. Reg. 48066).
36. Various automobile salvage trade associations have posted information on applicable regulations on their web sites, including storm water. Some trade magazines also have information on storm water and include advertisements for environmental consultants for storm water. Respondent indicated during the inspection that Respondent subscribed to and received trade magazines. Respondent has advertised as an automobile parts supplier in the classified section of multiple issues of "Locator UpFront" magazine, which also includes an Environmental Services section with consulting services for storm water.
37. Therefore, Respondent should have been fully aware of its responsibilities to meet the requirements related to storm water control.

Economic Benefit

38. Respondent received an economic benefit from its failure to obtain permit authorization and failure to comply with the requirements in the storm water discharge permit. It benefited by failing to submit a timely application for a permit, failing to develop a timely stormwater management plan, failing to do the required inspections, failing to do the required sampling, failing to submit annual reports, and failing to implement all required best management practices.

Ability to Pay

39. An EPA financial analyst has thoroughly reviewed Respondent's financial condition and has determined that the penalty should be substantially reduced in this matter.

Other Matters that Justice may Require

40. EPA made no adjustments regarding this factor.
41. Respondent consents and agrees to pay a civil penalty in the amount of \$2,000 in the manner described below:
 - a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this CCCA. Payment shall be made according to the instructions on the attached document entitled Attachment 1 Collection Information, which is incorporated by reference. A copy of the check or evidence or wire transfer shall be sent simultaneously to:

Stephanie Gieck, Environmental Scientist
Water Technical Enforcement Program, NPDES Unit (8ENF-W-NP)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129


- b. In the event payment is not received by the specified due date, interest will accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received, (i.e., on the 1st late day, 30 days of interest accrues).
 - c. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6 %) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the Final Order is signed). Payments are first applied to outstanding handling charges, 6 % penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
 - d. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or tax credit.

D. TERMS AND CONDITIONS


42. Nothing in this CCCA shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.
43. Failure by Respondent to comply with any of the terms of this CCCA shall constitute a breach of the CCCA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
44. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
45. The undersigned Respondent certifies that he is fully authorized to enter into and be bound by the terms and conditions of this CCCA.
46. In accordance with 40 C.F.R. § 22.45, EPA will provide public notice of this action. EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that the CCCA is inappropriate, improper, or inadequate.
47. If comments received during the public comment period do not require modification of or withdrawal from this CCCA by EPA, the parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
48. Each party shall bear its own costs and attorney fees in connection with this matter.
49. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged herein,

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 1/19/12


By: 
for Andrew M. Gaydosh Assistant Regional
Administrator Office of Enforcement,
Compliance & Environmental Justice

Date: January 19, 2012

By: 
Marc Weiner
Senior Enforcement Attorney
US EPA, Region 8, ENF-L
1595 Wynkoop St.
Denver, CO 80202
303-312-6913

**Lester McElroy Doing Business As Adam's
Wrecking II**

Date: 1-9-12

By: 
Lester McElroy
Adam's Wrecking II
30586 E. Highway 50
La Junta, Colorado
719-384-2071

RECEIVED

JAN 17 2012

Office of Enforcement
Compliance & Environmental Justice

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental
Protection Agency "

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT and FINAL ORDER** in the matter of **LESTER McELROY, d/b/a ADAM'S WRECKING II; DOCKET NO.: CWA-08-2012-0005** was filed with the Regional Hearing Clerk on January 26, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on January 26, 2012 to:

Lester McElroy
d/b/a Adam's Wrecking II
30586 E. Highway 50
LaJuanta, Colorado 81050

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

January 26, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT/FINAL Order** in the matter of **LESTER McELROY, d/b/a ADAM'S WRECKING II; DOCKET NO.: CWA-08-2012-0005** was filed with the Regional Hearing Clerk on January 26, 2012; **FINAL ORDER** after public comment period was filed March 14, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on March 14, 2012 to:

Lester McElroy
d/b/a Adam's Wrecking II
30586 E. Highway 50
LaJuanta, Colorado 81050

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

March 14, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk



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