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HEARINGS CLERK
EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

COLASKA, INC.,

Juneau, Alaska

Respondent.

DOCKET NO. CWA-10-2019-0020

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), the 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 \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See 83 Fed. Reg. 1190 (January 10, 2018) (2018 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 Colaska, Inc., doing business as AGGPRO (“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), issuance 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 re delegated this authority to the Director of the Office of Compliance and Enforcement, 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 the “discharge of a pollutant” to mean the addition of any pollutant to navigable waters from any point source.

3.4. CWA § 502(6), 33 U.S.C. § 1362(6) defines a “pollutant” to include, *inter alia*, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water.

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, “waters of the United States” has been 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 & 110.1 (2014).

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for the discharge of stormwater associated with industrial activity.

3.8. “Stormwater discharge associated with industrial activity” is defined to include, *inter alia*, facilities classified under Standard Industrial Classification codes 2951 (Asphalt Paving Mixtures and Blocks) and 3273 (Ready-Mixed Concrete). 40 C.F.R. § 122.26(b)(14)(ii).

3.9. The state of Alaska, through the Alaska Department of Environmental Conservation (ADEC), is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity. 73 Fed. Reg. 66,243 (Nov. 7, 2008).

3.10. ADEC issued the Multi-Sector General Permit for Stormwater Associated with Industrial Activity, General Permit Number AK060000, which became effective on April 1, 2015 (hereinafter “MSGP”). The MSGP authorizes, subject to the terms and conditions of the permit, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification codes 2951, 3273, and 3281.

General Allegations

3.11. Respondent is a corporation licensed to do business in the state of Alaska and is a “person” as defined in CWA Section 502(5), 33 U.S.C. § 1362(5).

3.12. At all times relevant to this action, Respondent leased and operated the property at 5771 Concrete Way, Juneau, Alaska (hereinafter, “Facility” or “Aggpro Site”).

3.13. The Facility consists of a concrete batch plant, asphalt plant, emulsion plant, crusher, and sand and gravel stockpiles, which perform activities categorized under Standard Industrial Classification codes 2951 (Asphalt Paving Mixtures and Blocks) and 3273 (Ready-Mixed Concrete).

3.14. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater into Lemon Creek via Outfalls 1 and 2. The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.15. Outfalls 1 and 2 are “point sources” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.16. Lemon Creek flows into Gastineau Channel, which is an inlet of the Pacific Ocean. Thus, Lemon Creek is a traditionally navigable water that may be susceptible to use in interstate commerce and is “waters of the United States” as defined at 40 C.F.R. § 122.2 (2014),

and therefore a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.17. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by MSGP permit number AKR06AA89. Respondent submitted a notice of intent to obtain MSGP coverage on June 23, 2015, and ADEC confirmed receipt of Respondent’s notice of intent on June 24, 2015.

3.18. At times relevant to this Order, the Respondent was implementing a Stormwater Pollution Prevention Plan (“SWPPP”) dated August 2, 2016 at the Facility.

3.19. On August 15 and 16, 2016, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent’s compliance with the MSGP and Sections 301 and 402 the CWA, 33 U.S.C. §§ 1311 and 1342.

3.20. As part of the inspection, EPA requested records concerning Respondent’s compliance with the MSGP including the SWPPP for the Facility. Respondent provided EPA with the SWPPP.

3.21. As part of the inspection, EPA reviewed Respondent’s quarterly visual assessment reports, routine facility inspection reports, and annual reports. Respondent was able to provide an annual report dated January 25, 2016; a visual assessment report dated August 11, 2015; and a routine facility inspection form dated August 11, 2015.

Violations

3.22. As described below, EPA alleges that, after obtaining MSGP permit coverage, Respondent violated certain terms and conditions of the MSGP permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Count 1 – Failure to Conduct Quarterly Monitoring

3.23. Part 7.1.7 of the MSGP requires that permittees monitor at least once in the following three-month intervals: Quarter 1: January 1 – March 31; Quarter 2: April 1 – June 30; Quarter 3: July 1 – September 30; Quarter 4: October 1 – December 1.

3.24. Part 7.1.7 of the MSGP provides that the monitoring schedule may be modified in accordance with Part 7.1.6 if the revised schedule is documented with the SWPPP.

3.25. Part 7.1.6 of the MSGP states that, if a facility is located in areas where freezing conditions exist that prevent runoff from occurring for extended periods, required monitoring events may be distributed during seasons when precipitation occurs, or when snowmelt results in a measurable discharge from the facility. The permittee must still collect the required number of samples.

3.26. Part 4.1 of the SWPPP specifies “samples will be collected on the following schedule: Quarter 1: April 1 to May 31 or when snowmelt discharge can be assessed; Quarter 2: June 1-June 30; Quarter 3: August 1-August 30; Quarter 4: October 1-October 31.”

3.27. EPA alleges that Respondent violated Part 7.1.7 of the MSGP, by failing to conduct monitoring in Quarter 4 of 2015. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2 – Failure to Conduct Visual Assessments

3.28. Part 6.2.1 of the MSGP requires Respondent to conduct a visual assessment of the stormwater from each outfall each calendar quarter. If no discharge occurs during the quarterly visual assessment period, Respondent must still report no discharge for this monitoring period and follow the requirements of Part 7.1.6.

3.29. EPA alleges that Respondent violated Part 6.2.1 of the MSGP, by failing to conduct visual assessments in Quarter 4 of 2015 and Quarters 1 and 2 of 2016. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3 – Failure to Conduct Routine Inspections

3.30. Part 6.1.1 of the MSGP requires Respondent to conduct routine inspections of areas of the facility covered by the requirements in the MSGP. Respondent must perform the inspection at least quarterly, and the inspection schedule shall be specified in the SWPPP.

3.31. Part 5.1 of the SWPPP specified that inspections must occur on the following schedule: “Quarter 1: April 1 to May 31 or when a snowmelt discharge can be assessed; Quarter 2: June 1 – June 30; Quarter 3: August 1 – August 30; Quarter 4: October 1 – October 31.”

3.32. EPA alleges that Respondent violated Part 6.1.1 of the MSGP, by failing to conduct routine inspection in Quarter 4 of 2015 and Quarters 1 and 2 of 2016. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4 – Failure to Implement Procedures to Prevent or Minimize Spills or Leaks

3.33. Part 4.2.4 of the MSGP requires Respondent to minimize the potential for leaks, spills and other releases that may be exposed to storm water and develop plans for effective response to such spills. At a minimum, the permittee must implement, *inter alia*, procedures for plainly labeling containers and procedures for material storage and handling, including the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas.

3.34. EPA alleges that, on August 16, 2016, Respondent violated Part 4.2.4 by failing to cover, label, and properly store containers of asphalt, asphalt emulsifying agent, and emulsifying

soap. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5 – Failure to Conduct Annual Training

3.35. Parts 4.2.9 and 5.8.5 of the MSGP require that permittees train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of the MSGP, including all members of the Pollution Prevention Team. Training must be conducted at least annually and documented in the SWPPP.

3.36. EPA alleges that Respondent violated Parts 4.2.9 and 5.8.5 of the MSGP by failing to conduct or document required annual training in 2015. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 6 – Failure to Collect Samples within 30 Minutes

3.37. Part 7.1.4 of the MSGP requires that monitoring samples be collected within the first 30 minutes of a discharge produced from a measurable storm event. If it is not possible to collect the sample within 30 minutes of discharge, the sample must be collected as soon as practicable and documentation must be kept with the SWPPP explaining why it was not possible to take samples within the first 30 minutes.

3.38. EPA alleges that Respondent violated Part 7.1.4 of the MSGP by failing to collect samples within 30 minutes of discharge on August 25, 2015, April 19, 2016, and July 11, 2016. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 7 – Failure to Perform pH Analysis within 15 Minutes of Sample Collection

3.39. Part 11.D.4 of the MSGP identifies pH as an effluent limit with an annual monitoring requirement that applies to discharges from asphalt emulsion facilities.

3.40. Part 1.11.4 of Appendix A of the MSGP requires that analyses of pollutants must be conducted using test procedures approved under 40 CFR Part 136.

3.41. Table II of 40 C.F.R. § 136.3 provides that the maximum holding time for pH analysis is 15 minutes.

3.42. EPA alleges that Respondent violated Part 1.11.4 of Appendix A of the MSGP by failing to conduct pH analyses within 15 minutes of sample collection on June 27, 2016. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 8 – Failure to Preserve Samples at or below 6° Celsius

3.43. Part 11.D.4 identifies total suspended solids (TSS) and oil and grease as effluent limits with an annual monitoring requirement that applies to discharges from asphalt emulsion facilities.

3.44. Part 1.11.4 of Appendix A of the MSGP requires that analyses of pollutants must be conducted using test procedures approved under 40 CFR Part 136.

3.45. Table II of 40 C.F.R. § 136.3 provides that, when analyzing for TSS or oil and grease, the samples must be preserved at or below 6°C.

3.46. EPA alleges that Respondent violated Part 1.11.4 of Appendix A of the MSGP by failing to preserve samples at or below 6°C on June 27, 2016. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

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

4.2. For purposes of this proceeding, 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), the 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 of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$24,500.

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 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, MO 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 ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Robert Grandinetti
U.S. Environmental Protection Agency
Region 10
825 Jadwin Avenue, Suite 210
Richland, Washington 99352
Grandinetti.robert@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. Except as described in Subparagraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Agreement, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and (4)(C), its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this Consent Agreement. Respondent also consents to the issuance of this Consent Agreement without further adjudication.

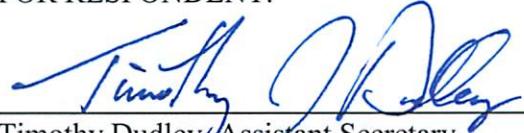
4.12. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

2/6/2019

FOR RESPONDENT:



Timothy Dudley, Assistant Secretary,
Colaska, Inc. and General Manager, SECON

DATED:

3/18/2019

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

COLASKA, INC.,

Juneau, Alaska

Respondent.

DOCKET NO. CWA-10-2019-0020

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 21st day of March, 2019.



RICHARD MEDNICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: COLASKA, INC., DOCKET NO.: CWA-10-2019-0020**, was filed with the Regional Hearing Clerk on the date below.

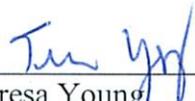
The undersigned certifies that a true and correct copy of the document was delivered to:

J. Matthew Moore
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on the date below to:

Timothy Dudley
Assistant Secretary, Colaska, Inc.
General Manager, SECON
4000 Old Seward Hwy., Suite 101
Anchorage, Alaska 99503

DATED this 21 day of March, 2019.



Teresa Young
Regional Hearing Clerk
EPA Region 10