

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: DOCKET NO. CWA-10-2022-0012

GT METALS & SALVAGE, LLC, **CONSENT AGREEMENT**

Longview, Washington

Respondent. 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 into 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. 247 (December 23, 2020).

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 GT Metals & Salvage, 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. 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.”

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

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

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

3.7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States.” At the time of the violations, Waters of the United States included, but were not limited to, waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; tributaries of those waters; and wetlands adjacent to those waters. 40 C.F.R. § 230.3(s) (2014).

3.8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires an NPDES permit for any stormwater discharge “associated with industrial activity” and authorized EPA to issue regulations to designate stormwater discharges associated with industrial activity and to establish a comprehensive program to regulate sources of stormwater associated with industrial activity. 33 U.S.C. § 1342(p).

3.9. The phrase “storm water associated with industrial activity” is broadly defined to mean the discharge from any conveyance that is used for collecting and conveying storm water

at an industrial plant. 40 C.F.R. § 122.26(b)(14). Facilities involved in the recycling of materials, such as metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to facilities classified under Standard Industrial Classification (SIC) codes 5015 and 5093 (metal scrap and recycling yards, battery reclaimers, salvage yards, and automobile junkyards), are defined as engaging in industrial activity. 40 C.F.R. § 122.26(b)(14)(vi).

3.10. EPA authorized the state of Washington to administer the NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). As an authorized state, the state of Washington, through its Department of Ecology (“Ecology”), issued the Industrial Stormwater General Permit (“ISGP”) on December 3, 2014, which became effective January 2, 2015 and expired on December 31, 2019. On November 20, 2019, Ecology reissued the ISGP, which became effective January 1, 2020.

3.11. Coverage under the ISGP is available for facilities that are engaged in certain industrial activities that are identified in Table 1 of the ISGP, including those facilities conducting industrial activities under SIC codes 5015 and 5093 (Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards).

3.12. Facilities that require NPDES permit coverage for stormwater dischargers associated with industrial activities obtain coverage under the ISGP by submitting a complete and accurate notice of intent to Ecology in accordance with the procedures set forth in condition S2 of the ISGP.

3.13. ISGP coverage extends to discharges of stormwater and conditionally approved non-stormwater discharges to waters of the state of Washington, which includes waters of the

United States within the jurisdiction of the state of Washington. Once covered, permittees are required to comply with conditions and requirements set forth in the ISGP.

3.14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation in a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

General Allegations

3.15. Respondent is a limited liability company organized under the laws of Washington State, and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.16. At all times relevant to this Consent Agreement, Respondent owned and/or operated a 2.53-acre metal recycling and auto salvage facility located at 2001 38th Avenue in Longview, Washington (“Facility”).

3.17. Respondent’s typical activities at the Facility include the processing, dismantling, and storing of vehicles and scrap metal and are covered under SIC codes 5015 and 5093 (Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards).

3.18. Stormwater runoff from a portion of the Facility flows south into Memorial Park Unimproved Ditch, which flows through a culvert into Consolidated Diking Improvement District No. 1 (CDID) Ditch # 10, which flows to the Columbia River, a traditionally navigable water used in interstate commerce. In the event that stormwater does not infiltrate the ground surface at such other portions of the Facility, it sheet-flows across the property boundary either to Memorial Park Unimproved Ditch to the south or an unnamed ditch to the east. A catch basin located in the unnamed ditch to the east was plugged at the City of Longview’s request prior to 2016. The plugged catch basin is connected through a culvert to CDID Ditch #12. CDID

Ditches #10 and #12 are each a “navigable water” under section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.19. The segment of the Columbia River into which CDID #10 enters is listed as impaired, pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d), for dissolved oxygen and temperature.

3.20. Respondent discharged stormwater associated with industrial activity from the Facility into waters of the United States, within the meaning of Sections 402(p) and 502(7) of the CWA, 33 U.S.C. §§ 1342(p) and 1362(7).

3.21. At all times relevant to this action, Respondent’s discharge of stormwater was covered by ISGP permit number WAR006718. The ISGP was effective January 2, 2015 to December 31, 2019, and Ecology reissued the ISGP effective January 1, 2020. Respondent submitted an application for coverage under the ISGP, dated February 18, 2015, indicating that stormwater from the Facility would discharge into Memorial Park Unimproved Ditch. Respondent submitted a request for renewal coverage under the ISGP, dated October 16, 2019.

3.22. On August 8, 2012, Complainant conducted an inspection of the Facility to determine Respondent’s compliance with the ISGP and the CWA.

3.23. On February 11, 2020, Complainant’s inspector (“Inspector”) conducted an unannounced inspection of the Facility to determine Respondent’s compliance with the ISGP and the CWA.

3.24. The allegations set forth in this action are based on the February 11, 2020 inspection and a review of records provided by Respondent and publicly available records obtained from Ecology.

Violations

3.25. As described below, from at least June 1, 2016 to July 1, 2021, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its ISGP permit number WAR006718.

Violation 1 – Failure to Provide Secondary Containment, One Count

3.26. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.27. On February 11, 2020, Complainant’s Inspector observed vehicle batteries uncovered and stored without secondary containment.

3.28. Condition S3.B.4.b.i.4.a of the ISGP requires permittees to store all hazardous substances and other chemical solid or liquid materials that have the potential to contaminate stormwater on an impervious surface that is surrounded with a containment berm or dike.

3.29. Respondent violated Condition S3.B.4.b.i.4.a of the ISGP by failing to provide secondary containment to stored batteries. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 2 – Failure to Use Drip Pan, One Count

3.30. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.31. On February 11, 2020, Complainant’s Inspector observed oil sheen and stained pavement at the Facility.

3.32. Condition S3.B.4.b.i.4.h of the ISGP requires permittees to use drip pans and absorbents under or around leaky vehicles and equipment or to store such equipment indoors where feasible.

3.33. Respondent violated condition S3.B.4.b.i.4.h of the ISGP by failing to use a drip pan beneath scrapped vehicles. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 3 – Failure to Develop a SWPPP, One Count

3.34. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.35. On February 11, 2020, Complainant’s Inspector requested a copy of the Facility’s SWPPP. Respondent submitted to EPA a folder of documents that did not include a SWPPP. During an EPA inspection, dated August 8, 2012, Respondent was unable to provide a SWPPP to EPA.

3.36. Condition S.3 of the ISGP requires that all permittees maintain and implement a complete SWPPP.

3.37. Respondent violated Condition S.3 of the ISGP by failing to develop a SWPPP for the Facility. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 4 – Failure to Submit Annual Reports, Four Counts

3.38. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.39. On February 11, 2020, Complainant’s Inspector requested Respondent’s ISGP compliance records from 2015 to the present. The Inspector’s review of annual reports concluded that Respondent failed to submit annual reports in 2017, 2018, 2019, and 2020.

3.40. Condition S9.C.1 of the ISGP requires that the permittee submit complete and accurate annual reports to Ecology no later than May 15 of each year.

3.41. Respondent violated Condition S.9.C.1 of the ISGP by failing to develop and submit annual reports in 2017, 2018, 2019, and 2020. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 5 – Failure to Conduct Quarterly Discharge Sampling, 13 Counts

3.42. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.43. Complainant’s Inspector reviewed Respondent’s discharge monitoring reports (“DMRs”) from the third quarter of 2016 to the first quarter of 2021. Each DMR stated “No discharge” with the exception of the DMRs from the first quarters of 2017 and 2018, which stated “Frozen ground/unsafe,” and the second, third, and fourth quarters of 2020, which cited the COVID-19 pandemic as the reason sampling was not conducted. At least one stormwater discharge event occurred per quarter for 12 quarters between the third quarter of 2016 and the first quarter of 2021, in which Respondent reported that no discharge occurred. Respondent failed to submit DMRs from the fourth quarter of 2019.

3.44. Condition S4.B.1 of the ISGP requires a permittee to sample discharges from the facility once per quarter.

3.45. Respondent violated Condition S4.B.1 of the ISGP by failing to sample the discharge from at least one stormwater discharge event during 13 quarters between the third quarter of 2016 and the first quarter of 2021. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 6 – Failure to Timely Submit Discharge Monitoring Reports, 16 Counts

3.46. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.47. Complainant’s Inspector reviewed DMRs submitted by Respondent. Ten DMRs from the third quarter of 2016 to the third quarter of 2019 were submitted on January 29, 2019. Respondent failed to submit a DMR for the fourth quarter of 2019.

3.48. Condition S9.B requires the permittee to submit DMRs by the deadlines set forth in Table 9 of the ISGP.

3.49. Respondent violated Condition S9.B by failing to timely submit DMRs for 16 quarters. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 7 – Failure to Complete Monthly Inspection Reports, 45 Counts

3.50. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.51. On February 11, 2020, Complainant’s Inspector requested Respondent’s ISGP compliance records from 2015 to the present. Respondent provided EPA with a folder of ISGP compliance documents. The files provided did not include any documents indicating that visual inspections were conducted.

3.52. Condition S7.A.1 of the ISGP requires the permittee to conduct and document visual inspections of the site each month.

3.53. Condition S7.C.1 of the ISGP requires that the permittee record the results of each inspection in an inspection report or checklist and keep the records on site.

3.54. Respondent violated Conditions S7.A.1 and S7.C.1 by failing to document visual inspections between at least June 2016 and February 2020. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 8 – Failure to Maintain Records Onsite, One Count

3.55. Paragraphs 3.1 to 3.24 are realleged and incorporated herein by reference.

3.56. On February 11, 2020, Complainant’s Inspector requested Respondent’s ISGP compliance records from 2015 to the present. Respondent provided a folder containing ISGP compliance documents. The folder contained only documents that the Facility had received from Ecology. The folder did not include a SWPPP, any DMRs, annual reports, monthly inspection records, or training records.

3.57. Condition S9.D.1 of the ISGP requires the permittee to maintain ISGP compliance documents onsite for a minimum of five years. Condition S.9.D.3 of the ISGP requires that the permittee make all plans, documents and records required by the ISGP immediately available to Ecology or the local jurisdiction upon request.

3.58. Respondent violated Conditions S9.D.1 and S9.D.3 of the ISGP by failing to maintain ISGP compliance records onsite at the Facility. Violations of the ISGP 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. 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 violation, 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 \$50,300.

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. 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, WA 98101
R10_RHC@epa.gov

Brian Levo
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
levo.brian@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 set forth in Part V, 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, above, 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. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. 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.

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

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12/29/21

FOR RESPONDENT:


MARC WALLACE
GT Metals & Salvage, LLC

DATED:

FOR COMPLAINANT:

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

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In the Matter of:

GT METALS & SALVAGE, LLC,

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Respondent.

DOCKET NO. CWA-10-2022-0012

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 _____, 2022.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10