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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. CWA-10-2013-0140
)
)
)
 Everett Recycling, LLC) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
 Respondent)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Everett Recycling, LLC (“Respondent”) hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a concise statement of the factual 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

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, inter alia, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7),(12), 33 U.S.C. § 1362(7), (12).

3.3. The regulations at 40 C.F.R. § 122.2 define “waters of the United States” to include “tributaries” to waters that are “interstate waters” and/or waters that “may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide...”

3.4. The CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.5. The CWA specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity” and also authorizes EPA to issue regulations that

designate additional stormwater discharge sources and establish a comprehensive program to regulate these additional sources. The CWA defines stormwater discharge associated with industrial activity (“industrial stormwater”) to include the discharge from any conveyance which is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. CWA § 402(p), 33 U.S.C. § 1342(p); 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(b)(14).

3.6. The regulations at 40 C.F.R. § 122.26(b)(vi) define “[s]torm water associated with industrial activity” to include discharges associated with “[f]acilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including ... those classified as Standard Industrial Classification 5015 and 5093.”

3.7. The State of Washington has been authorized by EPA to administer the NPDES program. As an authorized state under the CWA, in October 2009, the State of Washington issued the Washington Industrial Stormwater General Permit (“ISGP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The ISGP became effective on January 1, 2010 and authorizes certain discharges of stormwater associated with industrial activity at permitted facilities.

3.8. Coverage under the ISGP is available to facilities engaged in certain industrial activities, including 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, if those facilities propose to discharge pollutants via stormwater, surface water body, or to a storm sewer system that discharges to a surface water body.

3.9. The ISGP’s 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 the conditions and requirements set forth in the ISGP.

3.10. Facilities that require coverage under the ISGP must submit a complete and accurate permit application to the Department of Ecology in accordance with the procedures set forth in the ISGP at S1.

3.11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as may be reasonably required in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a), EPA has promulgated NPDES permit application requirements. Among these application requirements are:

- the requirement set forth in 40 C.F.R. § 122.21(a)(1) that “[a]ny person who discharges or proposes to discharge pollutants ... must submit a complete application to the Director,”
- the requirement set forth in 40 C.F.R. § 122.26(c)(1) that “[d]ischarges of stormwater associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit,” and,
- the requirement set forth in 40 C.F.R. § 122.21(c)(1) that Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity unless an applicable NPDES general permit specifies a different submittal date.

3.12. 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 or 308 of the CWA, 33 U.S.C. § 1311 or 1318.

3.13. Respondent is a corporation registered under the laws of the State of Washington. Respondent is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.14. Respondent began operations on or about October 1, 2010. These auto salvage activities resulted in discharges of pollutants via storm water to the Snohomish River.

3.15. Respondent has day-to-day operational control of those activities at the Everett Recycling facility ("Site") that resulted in releases necessitating permit coverage under the State of Washington Industrial Stormwater General Permit ("ISGP") issued by the Department of Ecology ("DEQ").

3.16. Respondent's business at the Site includes industrial activities that are among those described by Standard Industrial Classification (SIC) code 5015. SIC Code 5015 includes battery reclaimers, salvage yards, and automobile recyclers.

3.17. The Site is located at 2941 Chestnut Street, Everett, Washington, 98201. The Site is approximately one acre and is located one block west of the Snohomish River.

3.18. The Snohomish River is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a "water of the United States" as defined in 40 C.F.R. § 122.2.

3.19. As an operator of a regulated industrial facility that discharges stormwater into waters of the United States, Respondent was required to obtain coverage under the ISGP or obtain an individual NPDES permit before beginning to discharge stormwater associated with its industrial activities.

3.20. Between October 1, 2010 and June 5, 2012, Respondent failed to apply for an individual NPDES permit or properly seek coverage under the ISGP.

3.21. Respondent's failure to timely apply for an NPDES permit placed it in violation of the requirements imposed pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

3.22. On March 12, 2012, EPA conducted an inspection of the Site. The inspection was conducted to assess the Site's compliance with the Clean Water Act. During that inspection, EPA documented Site conditions that could expose stormwater to pollutants from industrial activities and lead to unauthorized pollutant discharges to the Snohomish River. There were numerous fuel and oil spills. In addition, along the driveway there were piles of scrap metal left out in the open, spills of unknown fluids, and a pile of car batteries exposed to the rain. The

oil/water separator appeared to be in need of maintenance. There were no pollution prevention practices in place within the portion of the Site that discharged, and no apparent spill prevention or cleanup measures or treatment measures to address pollution in stormwater leaving the Site.

3.23. During the inspection, EPA observed that most of the Site was paved, with only a small area of soil located at the low-point of the Site along the railroad tracks. The processing area, crusher, car storage and some stockpiles were observed by EPA to drain to a storm drain leading to the City of Everett's combined sewer system. Most of the driveway, some storage areas and scrap metal stockpiles and the loading area drained off-Site onto the railroad tracks. At the time of the inspection, EPA observed three separate stormwater flows draining toward the railroad tracks. EPA dye-tested the flows and traced the flows along and across the railroad tracks and into the Snohomish River.

3.24. Analysis of the samples collected on March 12, 2012 showed the presence of the following substances in the storm water runoff: petroleum, zinc, antimony, beryllium, copper, arsenic, nickel, cadmium and lead. These substances are "pollutants" pursuant to Section 502(6) of the CWA, 33 U.S.C. §1362(6).

3.25. The Site and, alternatively, the conveyances leading from the Site described in Paragraph 3.23 constitute a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.26. By causing such storm water to enter waters of the United States, Respondent engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. § 1311(a) and 1362(12).

3.27. Respondent's discharges of storm water from October 1, 2010 to June 5, 2012, were not authorized by a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342. Therefore, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.28. Each day that storm water was discharged without the required permit constitutes an additional day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT

4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained in this CAFO. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is in the amount of \$14,500.

4.4. Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in Paragraph 4.3, above, within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check 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
PO 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 described in Paragraph 4.5, above, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency

Region 10, MS ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Kristine Karlson
U.S. Environmental Protection Agency
Region 10, MS OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondent fails to pay the penalty assessed, Respondent may be subject 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.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, above, Respondent shall be responsible for payment of the amounts described below:

4.8.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 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, below, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the amount of the penalty set forth in Paragraph 4.3, above, Respondent must 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 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The penalty described in Paragraph 4.3, above, including any additional costs incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10 The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V, below.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT EVERETT RECYCLING, LLC:

9-9-2013



Signature

Print Name: Rick Lapinski

Title: Managing member

DATED:

FOR COMPLAINANT:

9/19/, 2013



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

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.


5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations or permits promulgated thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 26th day of September, 2010.


SOCORRO RODRIGUEZ
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 the Matter of: Everett Recycling, LLC, DOCKET NO. CWA 10-2013-0140**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

Elizabeth McKenna, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
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 to:

Rick Lapinski
P.O. Box 1978
Everett, WA 98206

Mark Reichlan
Everett Recycling
2941 Chestnut
Everett, WA 98201

DATED this 26th day of Sept, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10