

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
)  
Car Country )  
2713 Highway 14 South )  
Newton, Iowa 50208 )  
)  
Respondent )  
)  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
\_\_\_\_\_ )

Docket No. CWA-07-2008-0037

FINDINGS OF VIOLATION,  
ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA Region VII and further delegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

2. Respondent is Car Country (hereinafter, "Car Country"), a sole proprietorship owned by Danny L. Cupples, doing business in the State of Iowa.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the

requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity”, in part, as “facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

9. The Iowa Department of Natural Resources (hereinafter “IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The IDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. 1 on October 1, 2007. The permit governs storm water discharges associated with industrial activity from facilities under Standard Industrial Classifications 5015 and 5093.

#### Factual Background

11. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent was the owner and/or operator of an automobile junkyard or salvage yard known as Car Country, located at 2713 Highway 14 South, Newton, Iowa 50208 (the Site) and assigned a SIC code of 5015. At the time of the inspection the yard contained an estimated 2000 vehicles.

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and goes directly and/or into an unnamed tributary to Cherry Creek. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. Respondent's storm water runoff is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The Site was a "point source" which caused the "discharge of pollutants" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

17. Respondent discharged pollutants directly and/or into an unnamed tributary of Cherry Creek.

18. The unnamed tributary, and Cherry Creek, are "navigable waters" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

19. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA.

20. On or about April 20, 2003, Respondent submitted a NOI for coverage under the IDNR General Permit No. 1.

21. Permit #IA-3557-3534 was issued to Respondent and will expire on May 1, 2008.

22. On September 26, 2007, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate compliance with the CWA.

#### Findings of Violation

#### **Failure to Develop an Adequate Storm Water Pollution Prevention Plan (SWPPP)**

23. The facts stated in paragraphs 11 through 22 above are herein incorporated.

24. Part III(C), Storm Water Pollution Prevention Plans, of the IDNR, NPDES General Permit No. 1, states "a storm water pollution prevention plan shall be developed for each facility covered by this permit."

25. Part III(C)(4), of the IDNR, NPDES General Permit No. 1, states in part, that the plan shall include, at a minimum, the following items:

A. Description of Potential Pollutant Sources: Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges and identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum: A(1). A site map showing each existing structural control measure to reduce pollutants in storm water runoff; A(4). For each area of the plant that generates storm water associated with industrial activity with a reasonable potential for containing significant amounts of pollutants...an estimate of the types of pollutants likely to be present in storm water discharges.

B. Storm Water Management Controls: Each facility covered by this permit shall develop a description of storm water management controls appropriate to the facility, and, implement such controls. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls: B(1). Responsible Person; B(4). Good Housekeeping; B(5). Spill Prevention and Response Procedures; B(8). Employee Training; B(9). Record Keeping and Internal Reporting Procedures; B(10). Non-storm Discharges.

26. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to identify pollutants likely to be present in storm water discharges from the facility in accordance with Part III of the IDNR, NPDES General Permit No. 1.

27. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to describe the structural and non-structural controls for the storage of materials that may be exposed to storm water and indicate the location of those controls on a SWPPP map.

28. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to describe the pollutant or activity to be controlled by each selected control and provide an implementation schedule.

29. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to identify the specific individual(s) responsible for implementing and maintaining the SWPPP.

30. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to certify that discharges from Car Country are free of non-storm water.

31. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to incorporate the 8 baseline controls (good housekeeping, minimizing exposure, spill prevention/response procedures, routing inspections and comprehensive site evaluations, employee training, etc.)

32. Respondent's failure to develop an adequate SWPPP is a violation of Respondent's General Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and §1342(p).

### **Failure to Perform and Document Site Inspections**

33. The facts stated in paragraphs 11 through 22 are herein incorporated.

34. Part III(C)(4)(C), Visual Inspection, of the IDNR, NPDES General Permit No. 1, states in part, "qualified personnel shall inspect designated equipment and plant area at appropriate intervals specified in the plan, but, in no case less than once a year."

35. Part III(C)(4)(C)(3) of the IDNR, NPDES General Permit No. 1, states in part, "a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and action taken ... shall be made and retained as part of the SWPPP for at least three years."

36. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to inspect material handling areas and other potential sources of pollution at appropriate intervals, but in no case less than once a year, and generate a report summarizing the inspection in accordance with Part III(C)(4) of the IDNR, NPDES General Permit No. 1.

37. Respondent's failure to perform and document visual inspections are a violation of Respondent's General Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a) and §1342(p).

### **Failure to Conduct Annual Monitoring**

38. The facts stated in paragraphs 11 through 22 are herein incorporated.

39. Part V(B)(11), Monitoring Requirements, of the IDNR, NPDES General Permit No. 1, requires facilities with storm water discharge associated with industrial activity such as automobile junkyards with over 250 units to monitor based on the listed A. Parameters; and B. Frequency of Monitoring.

40. Part V(D)(2), Reporting, of the INDR, NPDES General Permit No. 1, states in part “permittees must retain monitoring results in accordance with Part V(E)”.

41. The EPA inspection referenced in paragraph 22 above revealed Respondent had failed to conduct sampling and retain records in accordance with Part V(B)(11) and (D)(2) and (E)(1) of the IDNR, NPDES General Permit No. 1.

42. Respondent’s failure to conduct monitoring and retain records of monitoring information is a violation of Respondent’s General Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a) and §1342(p).

#### Order For Compliance

43. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in the paragraphs below.

44. Within thirty (30) days of the effective date of this Order, Respondent shall submit in writing proposed amendments to the SWPPP, developed by qualified personnel, detailing the specific actions necessary to correct the violations cited herein including detailing what action is required to correct the deficiencies and eliminate and prevent reoccurrence of the violations cited above, and a schedule for implementation and reporting the results to come into compliance with all of the applicable requirements of the permit.

45. Upon receipt of EPA’s approval of the Plan, Respondent shall implement such plan in accordance with the schedule contained therein.

46. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of the EPA’s approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by the EPA, the EPA will provide written comments to Respondent explaining the basis for its decision. Within ten (10) days of receipt of the EPA’s disapproval pertaining to any submission, Respondent shall amend/revise the disapproved submission, addressing all of the EPA’s comments, and resubmit same to the EPA. If the EPA disapproves the revised submission, the EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, the EPA will notify Respondent of the modification/approval.

### **Submissions**

47. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Michael Boeglin  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency - Region VII  
901 North Fifth Street  
Kansas City, KS 66101

48. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Joe Griffin  
Iowa Department of Natural Resources  
Wallace Building  
502 E. 9th Street  
Des Moines, IA 50319-0034.

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

49. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

50. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

### **Access and Requests for Information**

51. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

### **Severability**

52. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

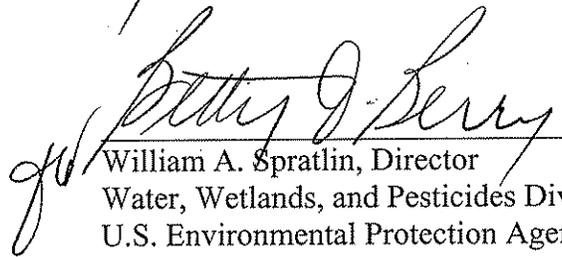
### **Effective Date**

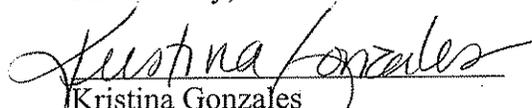
53. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA Region VII.

### **Termination**

54. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 4th day of February, 2008.

  
William A. Spratlin, Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

  
Kristina Gonzales  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Danny Cupples  
Car Country Auto Wrecking  
2713 Hwy 14 South  
Newton, IA 50208

Joe Griffin  
Iowa Department of Natural Resource  
Wallace Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034; and

Ed Tormey  
Iowa Department of Natural Resource  
Wallace Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319-0034.

Jim Stricker  
Iowa Dept. of Natural Resources, Field Office #5  
401 SW 7<sup>th</sup> St., Suite 1  
Des Moines, IA 50309

2/11/08  
\_\_\_\_\_  
Date

Kim [Signature]  
\_\_\_\_\_  
Sender