

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
) Docket No. CWA-07-2016-0089
MISSOURI SMELTING TECHNOLOGY,)
INC.)
)
Troy, Missouri)
)
Respondent) ADMINISTRATIVE ORDER
) FOR COMPLIANCE
) ON CONSENT
)
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order”) is issued by the U.S. Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA, Region 7 and further delegated to the Director of the Water, Wetlands and Pesticides Division.

2. The Respondent in this case is Missouri Smelting Technology, Inc., (“MOST” or “Respondent”).

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 in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. It is the Parties’ intent through entering into this Order to address alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for MOST to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits, nor denies the specific factual allegations of Findings of Violation in the Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. 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.

Stormwater

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

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

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. 40 C.F.R. § 122.26(b)(14)(xi) defines "stormwater discharge associated with industrial activity," in part, as discharges from facilities classified as Standard Industrial Classification ("SIC") code of 34xx (except 3441) (Fabricated Metal Products, except Machinery and Transportation Equipment).

11. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. The MDNR has issued General Permit #MO-R203 (General Permit) for stormwater discharges associated with the associated industrial activity related to Ferrous and Nonferrous foundries, casting, extrusion, rolling, galvanizing and finishing, structural steel production, light metal fabrication, electrical equipment manufacturing, including facilities with the SIC Code of 3499. The current 5-year permit for this General Permit has an effective date of October 1, 2014, and an expiration date of August 31, 2019.

Factual Background

13. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Missouri Smelting Technology, Inc., located at 50 Cherry Blossom Way, Troy, Missouri 63379 (“Facility”), operating under SIC code 3499 (Fabricated Metal Products, except Machinery and Transportation Equipment).

14. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge into Whitcomb Branch which is a tributary to the Cuivre River which in turn is a tributary to the Mississippi River.

15. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13). Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The Mississippi River and its tributaries, as identified in Paragraph 14, above, are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

18. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

19. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(xi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

20. At all times relevant to this action, Respondent’s facility has been subject to the referenced General Permit MO-203. After receipt of a Notice of Intent (“NOI”) from Respondent, dated on or about April 21, 2014, the MDNR re-issued authorization under the General Permit (Permit No. #MO-R203255) to Respondent on September 26, 2014 (“Permit” or “Respondent’s Permit”).

21. Respondent has operated under the Permit at all times relevant to this Order. At all relevant times related to these proceedings, the provisions of the Permit applicable to Respondent have remained substantially the same.

22. On or about November 18, 2015, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondent’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.

23. During the Inspection, the EPA inspector reviewed Respondent's records related to the Permit and observed the facility and the receiving stream to which stormwater is discharged.

24. At the conclusion of the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation ("NOPV") identifying potential violations of Respondent's Permit, including, but not limited to: failure to conduct proper sample collection for pH in accordance with 40 C.F.R. Part 136 and failure to complete Corrective Action Reports ("CARs") following benchmark exceedances which describe efforts taken to identify and address the cause(s) of the high levels.

25. On or about November 19, 2015, Respondent provided a response to the NOPV.

A. FINDINGS OF VIOLATION

Failure To Conduct, Report and/or Document Corrective Actions Following Benchmark Exceedances

26. The facts stated in Paragraphs 7 through 25 above are herein incorporated.

27. The Monitoring Requirements section of Respondent's Permit provides benchmark parameters to be sampled and requires that such samples be collected once per quarter ("reference benchmarks"). Item Number "2" of Permit's Monitoring Requirements section states:

If a sample exceeds a benchmark, the facility must review the Stormwater Pollution Prevention Plan ("SWPPP") and Best Management Practices ("BMPs") to determine what improvements or additional controls are needed to reduce that pollutant in the stormwater discharge(s). Failure to improve BMPs or take corrective action to address a benchmark exceedance and failure to make tangible progress towards achieving a benchmark is a permit violation.

28. Item "3" of the Permit's Monitoring Requirements section states:

Any time a benchmark exceedance occurs a Corrective Action Report ("CAR") must be completed and documented in the SWPPP. A CAR is a document that records the efforts undertaken by the facility to improve BMPs to meet benchmarks in future samples.

29. Section 6.2.2 of Respondent's SWPPP provides the Facility's procedure for addressing "Benchmark Exceedances." Section 6.2.3 of Respondent's SWPPP provides the Facility's procedures for completing CARs and repeats the Permit language as stated in Paragraph 27, above, and additionally states, "Any documentation related to Corrective Action Reports should be kept in Appendix I of this report (SWPPP)".

30. Respondent's benchmark sampling results have regularly exceeded benchmark levels (for Aluminum, Copper, and/or Iron) dating back to the 4th Quarter 2014. The table below

depicts the results of Respondent's stormwater monitoring (bold indicates benchmark exceedance):

| Parameter | Benchmark Concentration | 4 th Qtr 2014 | 1 st Qtr 2015 | 2 nd Qtr 2015 | 3 rd Qtr 2015 | 4 th Qtr 2015 | 1 st Qtr 2016 |
|------------------------|-------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Aluminum | 750 µg/L | 1200 | 320 | 1100 | 2200 | 2500 | 570 |
| Copper | 21.2 µg/L | 17 | 14 | 25 | 17 | 28 | 23 |
| Iron | 1,000 µg/L | 830 | 84 | 830 | 2500 | 1600 | 430 |
| Oil & Grease | 10 mg/L | <5.0 | <5.1 | <5.1 | <5.0 | <5.0 | <5.0 |
| pH | 6.5-9.0 standard units | 8.5 | 8.0 | 7.8 | 7.9 | 8.32 | 8.16 |
| Total Suspended Solids | 100 mg/L | 53 | 3.2 | 33 | 87 | 43 | 26 |
| Zinc | 176.7 µg/L | 110 | - | 120 | 76 | 63 | 39 |

31. Until at least August 2015, Respondent failed to conduct appropriate corrective actions to reduce pollutant levels below the Permit's reference benchmarks, and failed to complete the required CARs and update the facility's SWPPP in order to document the required corrective actions.

32. Respondent's failure to perform and/or document adequate corrective actions following benchmark exceedances and to submit the required CARs and/or update the facility's SWPPP are each violations of the terms and conditions of its Permit, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Failure to Follow Proper Sampling Procedures

33. The facts stated in Paragraphs 7 through 25 above are herein incorporated.

34. Standard Conditions Part I of Respondent's Permit provide Monitoring and Reporting Requirements and requires that such samples are collected and analyzed in accordance with 40 C.F.R. Part 136. The Monitoring Requirements section of the Permit provides the sampling parameters that the Respondent is required to sample including hydrogen ion activity (pH) to be measured in standard units.

35. Section 6.2.1 of Respondent's SWPPP incorporates the benchmark sampling parameters listed in the Permit along with the sampling frequency.

36. Based on EPA's review of relevant information, Respondent failed to analyze pH within the allowable holding time as required by applicable provisions of 40 C.F.R. Part 136. As stated in Paragraph 25, the Respondent provided a response to EPA's NOPV and represents that it has ordered an appropriate pH meter that will monitor pH within the 15-minute sampling timeframe.

37. Respondent's failure to follow proper sampling and analysis procedures in accordance with 40 C.F.R. Part 136 is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

B. ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED and Respondent hereby CONSENTS to take the actions described below.

38. Respondent shall immediately take the steps described in this Order on Consent to eliminate any discharges that are in violation of the Permit.

39. Within thirty (30) days of the Effective Date, Respondent shall commence actions necessary to correct the deficiencies identified in this Order and to come into compliance with all of the applicable requirements of its Permit, including, but not limited to:

- a. Conduct a comprehensive evaluation of the BMPs currently being utilized to control the discharge of pollutants above the permit's reference benchmarks, and develop and implement improved BMPs in order to reduce pollutant levels below the permit's reference benchmarks;
- b. Conduct monthly sampling of stormwater runoff for all benchmark parameters required by the Permit for a period of no less than 6 months in order to effectively evaluate BMPs. This requirement shall continue until Respondent has met all of the permit's referenced benchmarks for three consecutive months or Respondent is notified of the termination of the requirement by EPA;
- c. Develop a mechanism to evaluate the monthly sampling data and incorporate any additional necessary changes to BMPs into the SWPPP;
- d. Revise and update components of the SWPPP to describe all improved BMPs, Corrective Actions, and the documentation of CARs; and
- e. Revise sampling procedures to ensure that the sampling procedures meet all applicable requirements of 40 C.F.R. Part 136 and the Permit's Standard Conditions Part I.

40. Within forty-five (45) days of the effective date of this Order, the Respondent shall submit a written report to provide the following:

- a. a copy of the facility's most current and updated SWPPP, as updated to reflect all changes made pursuant to the preceding paragraph;
- b. a detailed description of all actions taken to date to achieve compliance with the current NPDES Permit conditions;

- c. a detailed description of the BMP evaluation and BMP plan of action selected to implement changes in order to ensure discharges of pollutants are below the permit's reference benchmark concentration levels; and
- d. a detailed description of the stormwater sampling plan and how the results will be evaluated to ensure BMPs are upgraded to prevent future exceedances of benchmark concentrations.

41. Consistent with the Respondent's Permit, the Respondent acknowledges that the CARs, as described above, made to MDNR are available to the public.

Quarterly Reporting

42. Beginning April 28, 2017, and for a period of two years, Respondent shall submit quarterly reports (by no later than January 28, April 28, July 28 and October 28) to EPA, with a copy to MDNR, until Respondent is notified by the EPA that the reporting may cease or this Order is terminated, that describe the actions taken by Respondent to comply with the terms of this Order and the applicable stormwater permit within the prior calendar quarter (January to March, April to June, July to September, October to December). The quarterly reports shall include, at a minimum, the following information:

- a. Progress Report – a description, with dates, of activities completed under this Order within the reporting period, including a clear statement as to whether each item identified in the Schedule was completed on time and successfully, and the results achieved;
- b. Anticipated Actions – a brief list of the activities planned to comply with the terms of this Order during the quarterly reporting period and a statement as to whether any delays are expected, and if so, an explanation of the reason for the delay in meeting the requirements of this Order and/or permit; and
- c. Submit to the EPA a copy of all submittals made to MDNR under the applicable stormwater permit for the Facility.

General Provisions

Effect of Compliance with the Terms of This Order for Compliance

43. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

44. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

45. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et. seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, 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. By entering into this Order, MOST does not waive or abandon any defenses it may have to any enforcement action by EPA to recover civil penalties.

Submittals

46. All documents to be submitted to EPA under this Order shall be submitted by mail or email transmittal to:

Lantz Tipton, or designate
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
tipton.lantz@epa.gov

Certification

47. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

Additional Work

48. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks required by Paragraphs 39 and 40, above, to achieve compliance with the Current Permit, or any future Permit. EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA review and approval a proposed schedule and tasks for completion of any additional work. Such proposed schedule and tasks shall be submitted within sixty (60) days of Respondent's receipt of EPA's determination or Respondent's proposal that any additional work is necessary, or according to an alternative

schedule established by EPA. Upon approval of a schedule for any such additional work, Respondent shall perform the specified tasks in accordance with the schedule and provisions contained therein.

Access and Requests for Information

49. 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

50. 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

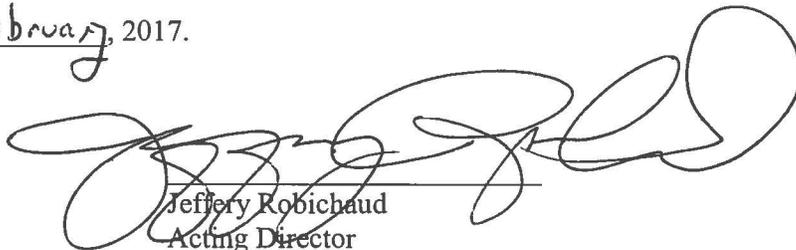
51. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

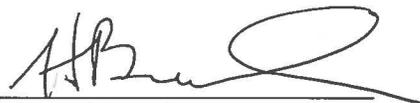
52. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met and shall not be unreasonably withheld once the requirements of this Order have been met.

For the United States Environmental Protection Agency.

Issued this 28 day of February, 2017.



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division



Howard Bunch
Senior Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Missouri Smelting Technology, Inc.

Issued this 14 day of FEBRUARY, 2017


Signature

MARK A. BAFFA EVP
Name
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Mr. Jim Clements
Plant Manager
Missouri Smelting Technology, Inc.
50 Cherry Blossom Way
Troy, Missouri 63379.

2-28-2017
Date

