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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HEARINGS CLERK
JUN 10 10

In the Matter of:

Northwest Hardwoods, Inc.
Mt. Vernon, Washington

Respondent

DOCKET NO. CWA-10-2019-0045

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 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), 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 also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to Section 309(g)(1)(A) and (g)(2)(B) of the CWA, 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 Northwest Hardwoods, Inc. (“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 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 the 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. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” CWA § 502(12), 33 U.S.C. § 1362(12).

3.4. The CWA defines a “pollutant” to include “industrial, municipal, and agricultural waste discharged into water.” CWA § 502(6), 33 U.S.C. § 1362(6).

3.5. The CWA defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.6. The CWA § 502(7) defines ‘navigable waters’ as ‘the 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; and tributaries to such waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

3.7. Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources and establish a comprehensive program to regulate these additional sources.

3.8. EPA’s regulations define “stormwater discharge associated with industrial activity” to include discharges associated with facilities under Standard Industrial Classification 2421. 40 C.F.R. § 122.26(b)(14)(xi).

3.9. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.10. In December 2014 Ecology reissued the 2015 Washington State Industrial Stormwater General Permit (“ISGP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The ISGP became effective on January 2, 2015 and has an expiration date of December 31, 2019. The ISGP authorizes certain discharges of stormwater associated with industrial activity at permitted facilities.

3.11. The ISGP requires facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable ISGP.

General Allegations

3.12. Respondent is a corporation duly organized under the laws of the State of Delaware and authorized to do business in the state of Washington and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.13. At all times relevant to this action, Respondent was the owner and/or operator of sawmill located in Mt. Vernon, Washington (“Facility”).

3.14. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater through an outfall into Indian Slough, which flows into Puget Sound. Indian Slough is thus tributary to an interstate water body that is subject to interstate commerce. As such, Indian Slough is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.15. 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).

3.16. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.17. At all times relevant to this Consent Agreement, the Facility had coverage under the ISGP (permit no. WAR010964).

3.18. Respondent violated the 2015 ISGP at times in 2015 and 2017. Violations were discovered during EPA's November 16, 2015 and December 14, 2017 inspections of the Facility, EPA's review of Respondent's stormwater pollution prevention plan ("SWPPP"), and Respondent's visual inspection reports.

Violations

3.19. As described below, from November 2015 to December 2017, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Stormwater GP.

Count 1: Failure to Identify and Eliminate Discharge of Process Wastewater

3.20. Condition S3.B.4.b.i.7 of the ISGP specifies that the facility Stormwater Pollution Prevention Plan identify and eliminate the discharge of process wastewater.

3.21. Appendix 2 (Definitions) of the ISGP provides definitions for various terms used in the ISGP. These definitions include "Stormwater," which "means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system..." and "Process

Wastewater” which “means any non-stormwater which, during manufacturing or processing comes in direct contact or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. If stormwater commingles with process wastewater, the commingled water is considered process wastewater.”

3.22. During EPA’s 2017 inspection, the inspectors noted and inquired about steam condensate, wet bulb water, and a leak in the steam condensate line from facility equipment (dry kilns). Respondent acknowledged that these sources are collected and routed to the central stormwater pond and commingled with the facility’s stormwater. Water collected in the central stormwater pond can overflow to a lower stormwater pond. Water within the lower stormwater pond can overflow and discharge to Indian Slough. These same discharges to the central stormwater pond were observed and noted during EPA’s 2015 inspection.

3.23. The discharges described in Paragraph 3.22 do not fall within the definition of stormwater as described in the ISGP. Instead, they fall within the definition of Process Wastewater in Appendix 2 of the ISGP, which must be identified and eliminated from discharge under the ISGP in Condition S3.B.4.b.i.7.

3.24. On November 16, 2015, and on December 14, 2017, Respondent discharged process wastewater to its central stormwater pond in violation of Condition S3.B.4.b.i.7 of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Implement Best Management Practices

3.25. Condition S3.B.4.b. of the ISGP states that “The permittee shall include each of the following mandatory BMPs in the SWPPP and implement the BMPs...” Condition

S3.B.4.b.i.2.d specifies good housekeeping practices, including “The Permittee shall keep all dumpsters under cover or fit with a lid that must remain closed when not in use.”

3.26. During EPA’s 2015 inspection, the inspectors noted four open dumpsters, containing copper wire, scrap metal, and garbage. The dumpsters were not stored under cover or fitted with lids.

3.27. During EPA’s 2017 inspection, the inspectors noted an open dumpster containing scrap metal. The dumpster did not have a lid and was outside and exposed to precipitation.

3.28. On November 16, 2015, and on December 14, 2017, Respondent failed to implement Best Management Practices in violation of Condition S3.B.4.b.i.2.d. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Implement Adequate Secondary Containment

3.29. Condition S3.B.4.b.i.4.a. of the ISGP requires the Permittee to store all chemical liquids, fluids, and petroleum products on an impervious surface that is surrounded with a containment berm or dike capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater.

3.30. At the time of the November 16, 2015 inspection, the EPA inspectors observed several containers in the boiler room that did not have secondary containment. The inspectors also saw a container in the shipping building without secondary containment.

3.31. At the time of the December 14, 2017 inspection, the EPA inspectors observed several containers in the boiler room that did not have secondary containment. The inspectors also saw two barrels stored outside without secondary containment.

3.32. At the time of EPA's November 16, 2015, and December 14, 2017, inspections of the Facility, Respondent failed to implement adequate secondary containment in violation of Condition S3.B.4.b.i.4. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 4: Failure to Maintain Records On-Site

3.33. Condition S7.A.1. of the ISGP requires the Permittee to conduct and document visual inspections of the site each month. Condition S7.C.1 of the ISGP states that "The Permittee shall record the results of each inspection in an inspection report or checklist and keep the records on-site, as part of the SWPPP..."

3.34. At the time of EPA's November 16, 2015, inspection, Respondent was not able to locate or provide fifteen visual inspection reports from October 2011 to December 2012 for the EPA inspectors' review.

3.35. At the time of EPA's December 14, 2017, inspection, Respondent was not able to provide four visual inspection reports from August through November 2017 for the EPA inspectors' review.

3.36. Respondent failed to maintain monthly visual inspections reports on-site for fifteen consecutive months between October 2011 and December 2012, and for four consecutive months between August and November 2017 in violation of Condition S7.C.1. of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.37. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that "any person has violated any permit condition or limitation ... in a permit issued" pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and

40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

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 and alleged violations contained in this Consent Agreement.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the 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 \$16,200.

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 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

Chae Park, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
park.chae@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 309(g)(9) of the CWA, 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. Respondent expressly waives any right to contest the allegations and waives any right to appeal this Consent Agreement and 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:

May 21, 2019

FOR RESPONDENT:

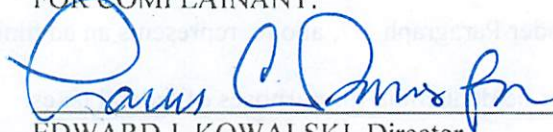


Nathan Jeppson
Chief Executive Officer
Northwest Hardwoods, Inc.

DATED:

May 30, 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:

Northwest Hardwoods, Inc.
Mt. Vernon, Washington

Respondent

DOCKET NO. CWA-10-2019-0045

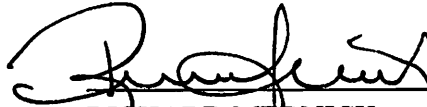
FINAL ORDER

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 10th day of June, 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: Northwest Hardwoods, Inc., DOCKET NO.: CWA-10-2019-0045** was 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:

Jennifer Byrne
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 to:

James A. Tupper, Jr.
Tupper Mack Wells PLLC
2025 First Ave, Suite 1100
Seattle, WA 98121

DATED this 10th day of June, 2019.



Teresa Young
Regional Hearing Clerk
EPA Region 10