

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Franklin County, Kansas) Docket No. CWA-07-2015-0122
)
)
Respondent) FINDINGS OF VIOLATION AND
) 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. The following Findings of Violation and Administrative Order for Compliance on Consent ("Order") are made and issued pursuant to 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 U.S. Environmental Protection Agency ("EPA") to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent is the Franklin County Construction and Demolition Landfill and Transfer Station ("Respondent"). Respondent's facility is located at 3323 Osborn Terrace, Ottawa, Kansas 66067.

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address 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 reached agreement regarding the timeframes for Respondent 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 or Findings of Violation in this 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.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System permit.

7. 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.

8. 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 comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. The regulations at 40 CFR §122.26(b)(14)(v) establish requirements for stormwater discharges associated with industrial activity from landfills that receive or have received any industrial wastes.

10. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

11. 40 C.F.R. §§ 122.26(a)(1)(ii), 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.

12. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. KDHE issued the facility a Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”), KSR000163, for the discharge of stormwater. The General Permit governs stormwater discharges associated with industrial activity, including landfills. The permit is effective from November 1, 2011, through

October 31, 2016. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention (“SWP2”) Plan.

FACTUAL BACKGROUND

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

15. At all times relevant to this action, Respondent was the owner and operator of a landfill and transfer station facility (“Site”), comprised of approximately 79 acres, and located on Highway 68 near Ottawa, Kansas.

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

17. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. 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, 33 U.S.C. § 1342.

19. KDHE issued NPDES Permit No. KSR000163 to Respondent on October 12, 2011. The permit was effective on November 1, 2011, and will expire on October 31, 2016. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Site.

20. On April 13-14, 2015, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) inspected the Site to determine Respondent’s compliance with its NPDES permit and the CWA.

FINDINGS OF VIOLATION

Count 1

Failure to Properly Operate and Maintain the Facility

21. The facts stated in Paragraphs 14 through 20 above are herein incorporated.

22. Section 4.1 of the Standard Conditions of Respondent’s NPDES permit states that the Respondent shall at all times properly operate and maintain all facilities.

23. During the EPA inspection referenced above, the inspector observed solid waste in

storm drains and the potential for stormwater runoff coming from the scrap metal piles. Also, the north berm of the retention pond was in need of repair. These observed conditions resulted from Respondent's failure to properly operate and maintain the facility.

24. Respondent's alleged failure to properly operate and maintain the facility is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Document Self-Site Inspections

25. The facts stated in Paragraphs 14 through 20 above are herein incorporated.

26. Section 2.4.3(d) of Respondent's NPDES permit states that Respondent shall perform inspections of designated facility areas at appropriate intervals, but no less than quarterly. The permit also requires that a set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections, with records maintained of inspections and corrective actions for at least three years.

27. During the EPA inspection referenced above, the inspector noted the facility had not documented self-site inspections and maintained records of such inspections.

28. Respondent's alleged failure to document self-site inspections and maintain records is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 3

Failure to Conduct Annual Comprehensive Site Compliance Evaluations

29. The facts stated in Paragraphs 14 through 20 above are herein incorporated.

30. Section 2.4.4 of Respondent's NPDES permit requires comprehensive site compliance evaluations to be conducted at least once a year. The evaluation shall be recorded in a report summarizing the scope, personnel, and date of the evaluation, and any observations of non-compliances and resolution of non-compliance, or a statement that the facility is in compliance with the conditions of its permit.

31. During the EPA inspection referenced above, the inspector noted that the facility failed to conduct comprehensive site evaluations in 2012 and 2014.

32. Respondent's alleged failure to conduct annual comprehensive site compliance evaluations is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 4

Failure to Conduct Visual Stormwater Monitoring

33. The facts stated in Paragraphs 14 through 20 above are herein incorporated.

34. Section 2.4.5 of Respondent's NPDES permit states that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

35. During the EPA inspection referenced above, the inspector noted that the facility failed to record annual visual examinations of stormwater quality in 2012, 2013 and 2014.

36. Respondent's alleged failure to conduct visual stormwater monitoring is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Order for Compliance

37. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.

38. Within sixty (60) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its industrial stormwater permit.

39. Within ninety (90) days of the effective date of this Order, Respondent shall provide EPA and KDHE a written description of the actions it has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

40. Respondent shall submit to EPA all submittals required under its NPDES permit until written termination of the Order, as described in Paragraph 46.

All required documents, including certifications, shall be submitted by electronic mail to:

sans.cynthia@epa.gov
Cynthia Sans, or her successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard

Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Mr. Mike Tate, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

41. 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.

42. 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 Sections 309(b), (c), (d), or (g) of the CWA, 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 CWA for any violation whatsoever.

Access and Requests for Information

43. 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

44. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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.

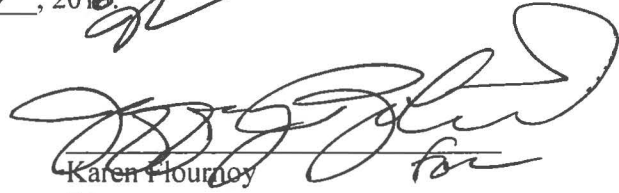
Effective Date

45. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.


Termination

46. 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.

Issued this 21 day of JANUARY, 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Franklin County Construction and Demolition Landfill and Transfer Station:

Jon Holmes 12/30/15
Signature Date

Jon Holmes
Name

County Administrator
Title

IN THE MATTER Of Franklin County, Kansas Respondent
Docket No. CWA-07-2015-0122

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

muehlberger.christopher@epa.gov

Copy by First Class Mail to Respondent:

John Hiatt, Solid Waste Director
Franklin County Construction and Demolition Landfill and Transfer Station
3323 Osborn Terrace
Ottawa, Kansas 66067

Dated: 1/27/14



Kathy Robinson

Hearing Clerk, Region 7