

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2020-0178
All State Steel, L.L.C.)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a))	
of the Clean Water Act,)	
33 U.S.C. § 1319(a))	
_____)	

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 Region 7’s Enforcement and Compliance Assurance Division.

2. Respondent, All State Steel, L.L.C. (“Respondent”) is and was at all relevant times a limited liability company licensed and authorized to do business under the laws of the state of Iowa.

3. The EPA, together with the Respondent (hereafter collectively referred to as the “Parties”) 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 alleged noncompliance by the Respondent with its National Pollutant Discharge Elimination System ("NPDES") permit IA-27801-27612 for stormwater associated with industrial activity. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for the 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, (2) agrees to

undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth 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, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order, except that Respondent admits the jurisdictional allegations herein.

7. Respondent consents to personal service of this Order by electronic mail delivered to the email address(es) listed for Respondent on the Certificate of Service.

Statutory and Regulatory Framework

8. 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 an NPDES permit issued pursuant to that Section.

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

10. 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.

11. 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.

12. 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 3441, which involves industries primarily engaged in fabricating iron and steel or other metal for structural purposes.

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

14. The IDNR issued Respondent NPDES General Permit No. 1 for stormwater discharges associated with industrial activity on October 16, 2015. The permit will expire on October 16, 2020.

15. Section III.C.1 of Respondent's NPDES permit requires Respondent to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP"), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit. The SWPPP must be maintained on site and fully implemented concurrently with operations at the facility.

EPA's General Findings

16. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as All State Steel, L.L.C. located at 22 41st Avenue SW, Cedar Rapids, Iowa 82404 ("Facility"). The facility is primarily engaged in fabricating steel parts and fixtures.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent's Facility and discharge to the City of Cedar Rapids storm water drainage system and then to Prairie Creek, which flows to the Cedar River.

18. The runoff and drainage from Respondent's Facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

19. Stormwater from the Facility contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

21. Prairie Creek and the Cedar River are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. 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).

23. 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.

24. At all times relevant to this Order, the Respondent has operated under the Permit and the provisions of the Permit have remained substantially the same.

25. On February 5, 2020, 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.

26. During the Inspection, the EPA inspector reviewed Respondent's records related to the Permit and observed the Facility, the Facility's stormwater outfalls, and observed the discharge

point to Prairie Creek. At the time of inspection, the facility did not have a SWPPP or site map for review.

27. At the conclusion of the Inspection the EPA inspector issued to Respondent a Notice of Potential Violation (“NOPV”) identifying issues that may be violations of Respondent’s Permit, including its failure to develop and implement a SWPPP.

28. To date, Respondent has not submitted a SWPPP to IDNR.

29. A copy of the Inspection report was mailed by the EPA to Respondent by letter dated March 6, 2020.

EPA’s Finding of Violations

30. The facts stated above are re-alleged and incorporated herein by reference.

31. Part III.C. of Respondent’s Permit requires that a SWPPP be developed for each facility covered by the Permit, and that the SWPPP is: prepared in accordance with good engineering practices; identifies potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility; and describes and ensures the implementation of practices which will be used to reduce pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

32. Respondent did not have a SWPPP developed at the time of inspection.

33. Respondent’s failure to develop and implement a SWPPP is a violation of its Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance on Consent

34. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

35. In accordance with this Order, the Respondent shall immediately take all necessary actions to comply with its NPDES permit.

36. Within 30 days of the effective date of this Order, Respondent shall develop and implement a SWPPP in accordance with all applicable requirements of the Permit.

37. Within one week of completing the SWPPP, Respondent shall submit a copy of the SWPPP by electronic mail to:

Angela Acord
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
acord.angela@epa.gov

38. After review of the information submitted by Respondent pursuant to the above Paragraphs, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

39. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

40. All documents required to be submitted pursuant to this Order shall also be submitted by electronic mail to IDNR to the email address provided below:

Ted Petersen
Iowa Department of Natural Resources
Ted.Petersen@dnr.iowa.gov

General Provisions

Effect of Compliance with the Terms of this Order

41. Compliance with the terms of this Order shall not relieve the Respondent of liability for, or preclude the 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. The 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 the 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 the EPA's right to obtain access to, and/or to inspect the Respondent's Facility, and/or to request additional information from the 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 the Respondent, is held by federal judicial authority to be invalid, the application to the 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. This Order shall be effective and enforceable against the Respondent on the Effective Date, which is the date this Order is signed by the EPA. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

46. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

For the Complainant, United States Environmental Protection Agency Region 7:

Issued this _____ day of _____, 2020.

David Cozad
Director
Enforcement and Compliance Assurance Division

Christopher Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7

For the Respondent, All State Steel, L.L.C.:

Craig J. Breitzbach 11-17-2020
Signature Date

CRAIG J BREITZBACH
Name

PRES / MEMBER
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7
R7_Hearing_Clerk_Filings@epa.gov

Representative(s) for Respondent:

Craig J. Breitbach, Owner
All State Steel, L.L.C.
cbreitbach@cedarvalleysteel.com

Representatives for Complainant:

Christopher Muehlberger
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U.S. Environmental Protection Agency Region 7
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Representatives for the State of Iowa:

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Ted Petersen
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Date

Signature