

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 JUL -1 PM 2: 27

IN THE MATTER OF:)
)
American Gilsonite Company,)
)
29950 South Bonanza Hwy.)
Bonanza, Utah 84008-9284,)
)
Respondent.)

FILED
EPA REGION VIII
HEARING CLERK
Docket No. CWA-08-2015-0019
**ADMINISTRATIVE ORDER ON
CONSENT**

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by and between the U.S. Environmental Protection Agency (EPA) and American Gilsonite Company (AGC) to carry out the goals of the Clean Water Act (CWA), 33 U.S.C. §§ 1251 – 1387, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

II. STATUTORY AUTHORITY

2. This Consent Order is issued under section 309(a) of the CWA, 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.
3. The Consent Order is based on the following FINDINGS OF FACT AND OF VIOLATION of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 402 of the CWA, 33 U.S.C. § 1342.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and upon AGC and AGC’s agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or operation of AGC shall alter its responsibilities under this Consent Order unless EPA, AGC and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than thirty (30) calendar days prior to such transfer, AGC shall notify EPA of the transfer at the address specified in Paragraph 39 of this Consent Order.

IV. STATEMENT OF THE PARTIES

5. The FINDINGS OF FACT AND OF VIOLATION in Section V of this Consent Order are made solely by EPA. In signing this Consent Order, AGC neither admits nor denies any of the FINDINGS OF FACT AND OF VIOLATION. Without any admission of liability, AGC consents to issuance of this Consent Order and agrees to abide by its terms. AGC waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review that AGC may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. AGC further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND OF VIOLATION, below, in any proceeding to enforce this Consent Order or in any action taken pursuant to this Consent Order.

V. FINDINGS OF FACT AND OF VIOLATION

6. AGC is an Oklahoma corporation authorized to conduct business in the State of Utah. Therefore, AGC is a “person” for purposes of section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
7. AGC owns and operates a Gilsonite® mining, processing and packaging facility in Township 9 South, Range 24 East, Utah (the Site).
8. The Site is in Indian country as determined by controlling federal case law.¹ However, the Ute Indian Tribe (Tribe) does not own, manage or control any of AGC’s facilities.
9. AGC’s mining operations require dewatering of the Gilsonite® mine veins in order to provide safe working conditions. This wastewater contains “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
10. Section 301(a) of the CWA 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
11. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.
12. Effective April 20, 2007, EPA issued AGC NPDES Permit No. UT-0000167 (2007 Permit) under the authority of section 402 of the CWA, 33 U.S.C. § 1342.
13. AGC filed an application with EPA to renew its NPDES permit in September 2010, and the 2007 Permit was administratively extended. EPA renewed AGC’s permit in March 2015, with an effective date of May 1, 2015 (2015 Permit).
14. Outfall 024, as described in Part 1.2 of the 2007 and 2015 Permits, is a significant discharging outfall from AGC’s mining operations. In June 2014, AGC submitted a request

¹ Ute Indian Tribe v. State of Utah, 114 Fed.3d 1513 (10th Cir. 1997).

to EPA to move Outfall 024. The relocation of Outfall 024 did not result in a change in water quality being discharged from the outfall, nor did it cause Outfall 024 to impact a different receiving water. Outfall 024 is located at latitude 40° 3' 40.00"N, longitude 109° 11' 56.09"W, as described in Part 1.2 of the 2015 Permit.

15. Outfall 024 is a "point source" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
16. All discharges from Outfall 024 flow to Coyote Wash, a tributary to the White River. The White River is a perennial tributary to the Green River, a navigable, interstate water of the United States within the meaning of 40 C.F.R. § 122.2 and section 502(7) of the CWA, 33 U.S.C. § 1362(7).
17. Part 1.3 of the 2007 Permit sets limitations on the amounts of specified pollutant constituents allowed in the effluent discharges from Outfall 024.
18. Part 1.3.1.2 of the 2007 Permit limits the amount of Total Dissolved Solids (TDS) to a daily maximum of 3500 mg/L.
19. Part 1.3.1.2. of the 2007 Permit limits the amount of Total Suspended Solids (TSS) to 25 mg/L per 30 day average and 35 mg/L per 7-day average.
20. Part 1.3.1.2. of the 2007 Permit limits the amount of oil and grease (O&G) to a daily maximum of 10 mg/L.
21. Part 1.3.2. of the 2007 Permit requires AGC to monitor TDS, TSS, O&G, among other constituents, on a monthly basis.
22. Part 2.4 of the 2007 Permit requires AGC to submit monthly effluent monitoring results obtained during the previous calendar quarter on a single Discharge Monitoring Report Form (DMR). The DMRs are required to be submitted to EPA, postmarked no later than the 28th day of the month following the completed reporting period.
23. Part 2.8.2.3. of the 2007 Permit requires AGC to report noncompliance with a maximum daily discharge limitation to EPA and the Tribe within twenty-four (24) hours of the time AGC first became aware of the circumstances.
24. Part 2.8.3. of the 2007 Permit requires AGC to provide a written submission to EPA and the Tribe within five (5) days of the time that AGC becomes aware of a violation of a maximum daily discharge limitation set by the 2007 Permit. The written submission is to contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time that the noncompliance is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.
25. Part 2.9 of the 2007 Permit requires AGC to provide a written submission to both EPA and the Tribe at the time that monitoring reports are submitted pursuant to Part 2.4 of the 2007 Permit for instances of noncompliance not required to be reported within twenty-four (24) hours.

26. AGC reported exceedances of the 2007 Permit-required effluent limitation for TDS at Outfall 024 to EPA on October 27, 2011; October 16, 2012; January 28, 2013; February 15, 2013; April 18, 2013; May 2, 2013; May 16, 2013; June 17, 2013; July 15, 2013; October 2, 2013; October 15, 2013; November 26, 2013; March 3, 2014; March 31, 2014; April 22, 2014; June 31, 2014; July 29, 2014; August 13, 2014; September 9, 2014; September 22, 2104; November 7, 2014; December 8, 2014; January 2, 2015; January 21, 2015; March 3, 2015; March 18, 2015, April 16, 2015 and May 7, 2015.
27. AGC reported exceedances of the 2007 Permit-required effluent limitation for TSS at Outfall 024 to EPA on February 14, 2011.
28. AGC reported exceedances of the 2007 Permit-required effluent limitation for O&G at Outfall 024 to EPA on February 14, 2011; April 25, 2011; November 10, 2011; July 25; 2012; October 16, 2012 and January 28, 2013.
29. AGC's exceedances of the 2007 Permit-required effluent limitations specified in Paragraphs 26, 27 and 28 of this Consent Order constitute violations of Part 1.3 of the 2007 Permit.
30. AGC failed to report exceedances of the 2007 Permit-required effluent limitation for TDS on October 27, 2011; October 16, 2012; January 28, 2013; February 15, 2013; April 18, 2013; May 2, 2013; May 16, 2013; June 17, 2013; July 15, 2013; November 26, 2013; March 3, 2014; March 31, 2014; April 22, 2014; June 31, 2014; July 29, 2014; August 13, 2014; September 9, 2014; December 8, 2014; and March 18, 2015 and for O&G for the dates specified in Paragraph 28 of this Consent Order within twenty-four (24) hours of becoming aware of the circumstances, in violation of Part 2.8.2.3 of the 2007 Permit.
31. AGC failed to provide a written submission within five (5) days of becoming aware of the circumstances of the TDS exceedances, as specified in Paragraph 26 of this Consent Order, and the O&G exceedances, as specified in Paragraph 28 of this Consent Order, in violation of Parts 2.8.3 – 2.8.3.4 of the 2007 Permit.
32. AGC failed to provide a written submission for the TSS exceedance specified in Paragraph 27 of this Consent Order at the time that monitoring reports were required to be submitted pursuant to Part 2.4 of the 2007 Permit, in violation of Part 2.9 of the 2007 Permit.
33. AGC's DMRs for the July to September 2010 and October to December 2010 monitoring periods were not postmarked by the 28th day of the month following the completed reporting period, in violation of Part 2.4 of the 2007 Permit.

VI. ORDER

34. Based on EPA's FINDINGS OF FACT AND OF VIOLATION, set forth in Section V of this Consent Order, and pursuant to section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and AGC AGREES to take the actions described below:
35. In accordance with this Consent Order, AGC shall identify and implement necessary actions to correct the deficiencies described in this Consent Order, and to comply with the conditions and limitations of its 2015 Permit.

36. Compliance Plan: Within thirty (30) days of AGCs receipt of a fully executed copy of this Consent Order, AGC shall submit to EPA a comprehensive written plan (Compliance Plan) for achieving compliance with AGC's permitted effluent limitations.
- a. The Compliance Plan shall describe in detail the specific actions to be taken or work to be completed, and why such actions or work are sufficient to comply with the effluent limitations for TDS, TSS and O&G prescribed by the 2015 Permit.
 - b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than April 30, 2016, subject to any extensions, as provided for in Paragraphs 43 and 44 of this Consent Order.
 - c. EPA will review the submission described in Subparagraphs a and b above, and may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct AGC to resubmit the document after incorporating EPA's comments.
 - d. Upon receipt of a notice of disapproval or a request for modification described in Subparagraph c, above, AGC shall, within fifteen (15) calendar days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the submission.
 - e. Following EPA's approval of the Compliance Plan, AGC shall submit quarterly reports to EPA describing the actions AGC has taken to comply with the terms of the Compliance Order. These reports are due every three (3) months after the effective date of this Consent Order, with each quarterly report due ten (10) days after the end of each calendar quarter (e.g. July 10, 2015, for the second quarter of 2015; October 10, 2015, for the third quarter of 2015, etc). These reports should include, at a minimum, a detailed update on the progress of the Compliance Plan, including a description of activities completed, milestones met during the reporting period, potential setbacks, new information which may result in changes to the Compliance Plan, and those activities scheduled for the next reporting period.
 - f. Within thirty (30) days of completion of the final scheduled corrective action, AGC shall submit a written certification to EPA that it has completed all actions required pursuant to the Compliance Plan.
37. Effective immediately, AGC shall report all occurrences of noncompliance as required by Parts 2.8 and 2.9 of the 2015 Permit. For the duration of this Consent Order, AGC may satisfy Part 2.8.3.4 of the 2015 Permit, which requires AGC to document the "steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance," by referring to the Compliance Plan submitted pursuant to this Consent Order.

38. Effective immediately, AGC shall submit DMRs to EPA postmarked no later than the 28th day of the month following the completed reporting period as required by Part 2.4 of the 2015 Permit.
39. All submittals to EPA required by this Consent Order shall be provided to:
- Natasha Davis
U.S. EPA Region 8, 8ENF-W-NP
1595 Wynkoop Street
Denver, Colorado 80202
davis.natasha@epa.gov
40. All submittals required by this Consent Order shall include the following certification statement, signed and dated by either a principal executive officer or duly authorized representative of AGC:
- I hereby 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 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 or imprisonment for knowing violations.*
41. Each submittal to EPA required by this Consent Order shall be sent via certified mail, unless otherwise agreed to in writing by EPA, to the person and address in Paragraph 39 of this Consent Order.
42. Upon approval by EPA, the Compliance Plan and other deliverables, reports, specifications, schedules, permits or attachments required by this Consent Order are deemed incorporated into this Consent Order. Any non-compliance with the Compliance Plan, deliverables, reports, specifications, schedules, permits or attachments shall be deemed a failure to comply with this Consent Order and shall be subject to EPA enforcement.
43. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, AGC shall notify EPA orally as soon as possible and in writing within ten (10) working days from the date AGC first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. AGC's written notice shall specify the date AGC first knew of the delay, the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by AGC to minimize the delay and a timetable by which those measures will be or have been implemented. Notification to EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of AGC to comply with requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.
44. If AGC demonstrates to EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond AGC's control (or the control of any of AGC's agents) that AGC could not have foreseen and prevented despite due diligence, and

that AGC has taken all reasonable measures to prevent or minimize such delay, EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. EPA's determination on these matters shall be made as soon as possible and in writing within ten (10) working days, after the receipt of AGC's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of AGC.

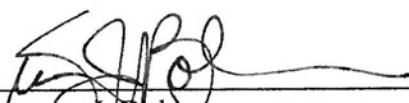
VII. GENERAL PROVISIONS

45. Issuance of this Consent Order shall not be deemed an election by EPA to forego any civil or criminal action to seek civil penalties, fines or other appropriate relief under the CWA for violations giving rise to the Consent Order.
46. This Consent Order does not constitute a waiver or modification of any requirements of the CWA, 33 U.S.C. §§ 1251 – 1387, all of which remain in full force and effect, nor does it otherwise affect EPA's ability to enforce or implement the CWA.
47. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve AGC of its obligation to comply with any applicable federal, state or local law regulation.
48. Failure to comply with the terms of this Consent Order may subject AGC to civil penalties of up to \$37,500 per day for each violation of an order issued by the Administrator of the EPA under section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. part 19.
49. This Consent Order shall become effective upon receipt by AGC of a fully executed copy. All time periods herein shall be calculated from the date of receipt of a fully executed copy of the Consent Order, unless otherwise provided in this Consent Order.
50. AGC shall allow, or use its best efforts to allow, access by any authorized representatives of EPA and the Tribe, or any of EPA's or Tribe's contractors, upon proper presentation of credentials, to sites and records relevant to this Consent Order for any of the following purposes:
 - a. To inspect and monitor progress of the activities required by this Consent Order;
 - b. To inspect and monitor compliance with this Consent Order; and
 - c. To verify and evaluate data and other information submitted by AGC to EPA.
51. This Consent Order shall in no way limit or otherwise affect EPA's authority, or the authority of any governmental agency, to enter the Site, conduct investigations, have access to records, issue notices and orders for enforcement, compliance or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit or court order.
52. Each party shall bear its own costs and attorney fees in connection with this matter.

53. This Consent Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. AGC may petition EPA to terminate this Consent Order upon completion of the Compliance Plan, correction of the deficiencies identified in this Consent Order and demonstrated compliance with the terms of its NPDES permit. EPA, in its sole discretion, will determine whether to grant such a petition from AGC.

**U.S. ENVIRONMENTAL
PROTECTION AGENCY, REGION 8.**

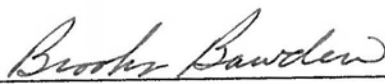
Date: 7/1/2015



Suzanne J. Bohan,
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

AMERICAN GILSONITE COMPANY.

Date: 6/17/15



Brooks Bawden
Land/Environmental Administrator