

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

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REGION 7

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IN THE MATTER OF)
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Organic Resource Management, Inc.)
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_____)

Docket No. CWA-07-2015-0125

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 12 of the Consent Agreement/Final Order is authorized in this proceeding.

Dated: 07-25-2016



Mark Hague
Regional Administrator

2016 JUL 26 PM 1:27

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
ORGANIC RESOURCE MANAGEMENT, INC.)	Docket No. CWA-07-2015-0125
)	
Respondent)	CONSENT AGREEMENT/ FINAL ORDER
)	
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

The U.S. Environmental Protection Agency, Region 7 (“EPA”) and Organic Resource Management, Inc. (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”).

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent discharged pollutants into waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent, Organic Resource Management, Inc. ("Respondent") operates a yard waste composting facility located at 13060 County Park Road, Florissant, Missouri 63034.

Statutory and Regulatory Framework

5. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, inter alia, Section 402 of 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 Permit ("NPDES").

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.

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

8. 40 C.F.R. § 122.26(b)(14) defines a stormwater discharge that is "associated with industrial activity," as "the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant," including "material handling sites," "refuse sites," "sites used for residual treatment, storage or disposal," and/or "storage areas for raw materials."

9. Pursuant to Section 402(p) of 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.

10. 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.

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 CWA. EPA maintains concurrent enforcement authority with authorized states for violations of CWA.

12. MDNR issued Respondent a Missouri General Permit for Stormwater Runoff Associated with Industrial Activity ("General Permit") for the discharge of stormwater runoff

associated with industrial activities from yard waste compost mixing operations. The permit was effective December 14, 2012, and will expire on December 13, 2017. The facility's permit, MOG970015 covers stormwater runoff from the facility and contains effluent limits for two outfalls, 001 and 002.

FACTUAL BACKGROUND

13. Respondent is a "person," as defined by Section 502(c) of CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondent operated a compost facility in Fort Bellefontaine, Missouri ("Site"), which covers approximately 19.36 acres and is located at 13060 County Park Road in Florissant, Missouri 64034.

15. This site is a "point source" that "discharges pollutants" into a tributary of Coldwater Creek, a "navigable water" of the United States, as these terms are defined by Section 502 of CWA, 33 U.S.C. § 1362.

16. EPA is authorized to require the owner or operator of any point source to establish and maintain records; make reports; install, use and maintain monitoring equipment; sample effluent; and provide other reasonably required information by Section 308(a) of CWA, 33 U.S.C. § 1318(a).

17. This 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 CWA 33 U.S.C. § 1362(14).

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

19. Respondent's discharge of pollutants in stormwater 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 CWA, 33 U.S.C. § 1342.

20. The MDNR issued NPDES general permit No. MOG970015 to Respondent on November 30, 2007, which expired November 29, 2012, and the current NPDES permit effective December 14, 2012, and will expire on December 13, 2017. The NPDES general permit governs Respondent's stormwater discharges at two designated outfalls that are associated with Respondent's composting activity at the Site.

21. On November 18 and 19, 2014, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a) inspected the Site to determine Respondent's compliance with its NPDES stormwater permit and the CWA.

22. On May 18, 2015 the EPA issued a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to further evaluate the Respondent's compliance with its NPDES

permit and the CWA. The Respondent submitted a timely two-part response received on June 18, 2015, and July 26, 2015.

FINDINGS OF VIOLATION

Count 1: Failure to Maintain Permit Effluent Limits

23. Respondent's NPDES stormwater permit establishes effluent limitations for Total Suspended Solids ("TSS"), Biochemical Oxygen Demand ("BOD"), and pH, at both outfalls.

24. A review of Respondent's records revealed that Respondent had exceedances of its NPDES permit stormwater runoff effluent limits for TSS and BOD between the first quarter of 2011 through the third quarter of 2014 from both outfalls 001 and 002, as outlined in the table attached in Appendix A.

25. Respondent's discharges of pollutants in excess of its NPDES permit limits is a violation of its NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Submit and/or Retain Monitoring and Inspection Records

29. Respondent's 2012 NPDES permit requires Respondent to submit Discharge Monitoring Reports ("DMRs") to the MDNR on a quarterly basis, which includes all monitoring and sampling required by its NPDES permit. Respondent's NPDES Permit, Standard Conditions Part 1, Section 7, "Record Retention," also requires Respondent to retain all monitoring records for a period of at least three (3) years.

30. Respondent failed to submit DMRs for the second, third or fourth quarters of 2012 for both outfalls 001 and 002. Respondent also failed to submit DMRs for Outfall 002 for five quarters between 2013 and 2015. A review of records submitted in the information request as well as DMR records provided by MDNR showed that Respondent failed to retain DMRs for 2012.

31. Respondent's failure to submit and/or retain monitoring reports are violations of Respondent's NPDES permit, and as such, are violations of Sections 301(a) and 402(p) CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 3: Failure to Conduct Site Inspections

32. Respondent's 2012 NPDES permit Condition 3(a) requires Respondent to conduct weekly site inspections of "any structures that function to prevent pollution of stormwater or to remove pollutants from stormwater, and of the facility in general to ensure that any BMPs are continually implemented and effective." The inspection reports are to be kept on site with Respondent's SWP2 Plan and maintained for a period of three (3) years.

33. A review of Respondent's records during the EPA inspection and records submitted pursuant to EPA's information request revealed that Respondent, although conducting monthly

inspections, failed to conduct weekly site inspections from January 2013 through November 24, 2014.

34. Respondent's failure to conduct weekly site inspections is a violation of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 4: Failure to Submit Annual Reports

35. Respondent is required by the NPDES permit to submit Annual Reports to MDNR "by January 28 of each year for the previous calendar year period." Reports must include "information on quantities and types of all raw materials stockpiled or composted during the year; results of any testing performed; quantity of compost sold, disposed or given away; and the quantity of composting materials on-site at the end of the year."

36. Respondent failed to submit Annual Reports to MDNR for 2011, 2012, and 2013.

37. Respondent's failure to submit annual reports is a violation of its NPDES permits, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

CONSENT AGREEMENT

38. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

39. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

40. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

41. Respondent and Complainant each agree to bear their own costs and attorney's fees.

42. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

43. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

44. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Sections 301 and 402 of the CWA.

45. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 44 above, of this CA/FO.

Supplemental Environmental Project

46. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Appendix B, which is enclosed to and incorporated into this Consent Agreement and Final Order. The parties agree that performance of the SEP, set forth in Appendix B, is intended to secure significant environmental restoration and protection.

47. Respondent agrees that within 30 days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the details and implementation of the SEP identified in Appendix B. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the estimated start date and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments within thirty (30) days of receipt. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's comments within thirty (30) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than twenty-four (24) months from the effective date of this Final Order.

48. Respondent shall notify EPA in writing within two weeks after the completion of the SEP. Within sixty (60) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
- b. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- c. An itemized accounting of the costs incurred per project in performance of the SEP.

49. Respondent shall pay stipulated penalties in the following circumstances:

- a. Except as provided in subparagraphs (b) and (c) below, for a SEP, which has not been completed satisfactorily pursuant to the approved SEP Work Plan as described above and as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Thirty Six Thousand Dollars (\$36,000), along with interest accrued at the statutory rate.
- b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting

documentation, that at least 80% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.

- c. If the SEP is satisfactorily completed, but the Respondent spent less than 80% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Appendix B and the amount expended in implementing the SEP.
- d. If no SEP is implemented and the penalty of Sixty Thousand Dollars (\$60,000) is not paid within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Five Thousand Dollars (\$5,000) in addition to that which is due, along with interest accrued at the statutory rate.

50. Payment of the stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by check, cashier's, or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The check shall note the case title and the docket number. A copy of the check shall be sent to Chris Muehlberger, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

51. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

52. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor

Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

53. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty of Twenty Four Thousand Dollars (\$24,000). Payment of this civil penalty shall resolve all civil and administrative claims for all violations of CWA alleged in this document.

54. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this Consent Agreement and Final Order. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

55. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payment shall be by check, cashier's, or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

56. The Respondent shall reference the Docket Number CWA-07-2015-0125 and In the Matter of Organic Resource Management, Inc. on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Reservation of Rights

57. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

58. With respect to matters not addressed in this CA/FO or the Administrative Compliance Order on Consent described above, EPA reserves the right to take any enforcement

action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

PENALTY

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

59. Respondent shall pay a civil penalty of Twenty Four Thousand Dollars (\$24,000). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

60. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

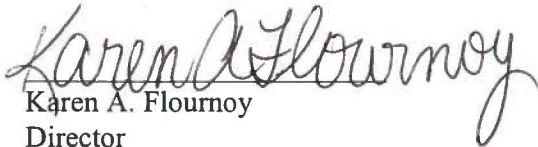
Parties Bound

61. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

62. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

7-19-16
Date




Chris Muehlberger
Assistant Regional Counsel

7.19.16
Date

RESPONDENT:

For Organic Resource Management, Inc.:

Patrick Geraty, President
Name/Title


Signature

May 5, 2016
Date

In the Matter of Organic Resource Management, Inc.

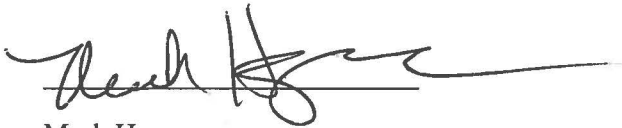
CWA Docket No. CWA-07-2015-0125

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Mark Hague', written over a horizontal line.

Mark Hague

Regional Administrator

07-25-2016

Date

Appendix A: Respondent's Stormwater Runoff Effluent Violations

Outfall #	Date	Parameter	Exceedance mg/L	Permit Limit	Violation
001	3/30/2011	BOD	3740	45	Daily Max.
001	3/30/2011	TSS	104	100	Daily Max.
002	3/30/2011	BOD	3450	45	Daily Max.
002	3/30/2011	TSS	550	100	Daily Max.
001	6/30/2011	BOD	305	45	Daily Max.
001	6/30/2011	TSS	220	100	Daily Max.
002	6/30/2011	BOD	364	45	Daily Max.
002	6/30/2011	TSS	700	100	Daily Max.
001	9/30/2011	BOD	95	45	Daily Max.
001	9/30/2011	TSS	550	100	Daily Max.
002	9/30/2011	BOD	110	45	Daily Max.
002	9/30/2011	TSS	550	100	Daily Max.
001	3/31/2012	BOD	510	45	Daily Max.
002	3/31/2012	BOD	205	45	Daily Max.
001	6/30/2012	BOD	90	45	Daily Max.
001	6/30/2012	TSS	110	100	Daily Max.
002	6/30/2012	BOD	35	30	Daily Max.
002	6/30/2012	TSS	386	100	Daily Max.
001	9/30/2012	BOD	2520	45	Daily Max.
001	9/30/2012	TSS	1170	100	Daily Max.
002	9/30/2012	BOD	6500	45	Daily Max.
002	9/30/2012	TSS	1480	100	Daily Max.
001	12/30/2012	BOD	170	45	Daily Max.
001	12/30/2012	TSS	118	100	Daily Max.
001	3/31/2013	BOD	50	45	Daily Max.
001	3/31/2013	TSS	106	100	Daily Max.
001	6/30/2013	BOD	610	45	Daily Max.
001	6/30/2013	TSS	760	100	Daily Max.
001	9/30/2013	BOD	4900	45	Daily Max.
001	9/30/2013	TSS	106	100	Daily Max.
001	12/31/2013	BOD	925	45	Daily Max.
001	12/31/2013	TSS	263	100	Daily Max.
001	6/30/2014	BOD	650	45	Daily Max.
001	9/30/2014	BOD	290	45	Daily Max.
001	9/30/2014	TSS	460	100	Daily Max.

IN THE MATTER Of Organic Resource Management, Inc., Respondent
Docket No. CWA-07-2015-0125

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:

Andrew C. Brought
Attorney at Law
Spencer Fane LLP
1000 Walnut, Suite 1400
Kansas City, Missouri 64106

Dated: 7/26/16


Kathy Robinson
Hearing Clerk, Region 7