

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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IN THE MATTER OF:

Grimmel Industries, L.L.C.
555 Market Street
Portsmouth, NH 03081

EPA ORC 4/5
OFFICE OF
REGIONAL HEARING CLERK

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Proceeding to Assess a Class II Civil
Penalty under Section 309(a) of the
Clean Water Act, as amended, 33
U.S.C. § 1319(a)

DOCKET No. CWA-01-2011-0036

I. STATUTORY AUTHORITY

1. This Administrative Complaint (“Complaint”) is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (the “Act”), 33 U.S.C. § 1319(g), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1-22.52 (“Consolidated Rules of Practice”).
2. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, EPA hereby provides notice of a proposal to assess a civil penalty against Grimmel Industries, L.L.C. (“Respondent”) for discharging pollutants into navigable waters of the United States without a permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for failing to apply for a National Pollutant Discharge Elimination

8. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines the term “point source” as “any discernible, confined and discrete conveyance”
9. Section 502(7) of the Act, 33 U.S.C. § 1362(7) defines the term “navigable waters” as “the waters of the United States, including the territorial seas.”
10. Pursuant to 402(p) of the Act, 33 U.S.C. § 1342(p), discharges of storm water associated with industrial activity must be permitted.
11. Pursuant to Sections 308 and 402(p) of the Act, 33 U.S.C. §§ 1318 and 1342(p), EPA promulgated regulations relating to the control of stormwater at 40 C.F.R. § 122.26.
12. On September 29, 1995, EPA issued the “Final National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities” (“1995 MSGP”), which was effective on the date of issuance. 60 Fed. Reg. 50804 (September 29, 1995). The 1995 MSGP covered storm water discharges associated with industrial activities for certain states, including New Hampshire. Facilities requiring coverage under the 1995 MSGP were required to file a Notice of Intent (“NOI”) to be covered under the permit by March 29, 1996.
13. On October 30, 2000, EPA re-issued the “Final National Pollutant Discharge Elimination System Stormwater Multi-Sector General Permit for Industrial Activities” (“2000 MSGP”) which was effective on the date of issuance. 65 Fed. Reg. 64745 (October 30, 2000).
14. On September 29, 2008, EPA issued the final 2008 “Final National Pollutant Discharge Elimination System Stormwater Multi-Sector General Permit for Industrial Activities” (“2008 MSGP”). This permit replaces the 2000 MSGP.

- 2.1.1, meet the non-numeric effluent limits in Part 2.1.2, and meet limits contained in applicable effluent limitations guidelines in Part 2.1.3.”
21. Part 2.1. further provides that if the permittee finds that its “control measures are not achieving their intended effect of minimizing pollutant discharges, [the permittee] must modify these control measures as expeditiously as practicable.”
 22. Part 2.2.1 of the 2008 MSGP, “Water Quality Standards”, requires that discharges must be controlled as necessary to meet applicable water quality standards.
 23. Part 4.1.1 of the 2008 MSGP, “Routine Facility Inspection Procedures”, requires that, at least once each quarter, the permittee conduct routine facility inspections of all areas of the facility where industrial materials or activities are exposed to stormwater and of all stormwater control measures used to comply with the effluent limits contained in the permit. Part 4.1.2 requires that permittees must document the findings of each routine facility inspection performed and maintain this documentation onsite with the stormwater pollution prevention plan (“SWPPP”).
 24. Part 4.2.1 of the 2008 MSGP, requires that once each quarter for the entire permit term, a facility must collect a stormwater sample from each outfall and conduct a visual assessment of each of these samples.
 25. Part 4.3 of the 2008 MSGP, “Comprehensive Site Inspection Procedures”, requires that the permittee must conduct annual comprehensive site inspections covering all areas of the facility affected by the requirements of the 2008 permit. Part 4.3.2. requires that the permittee document the findings of each

Process Water Discharges

33. From February of 2002 to the present, Respondent has sprayed scrap metal piles with water to suppress dust.
34. The water that Respondent sprays on the metal scrap piles becomes contaminated by running through the piles of metal scrap.
35. Dust suppression wastewaters are process waste waters.
36. On numerous occasions Respondent discharged dust suppression wastewater to the Piscataqua River.
37. Respondent is not authorized to discharge dust suppression waters to the Piscataqua River.

Stormwater Discharges

38. Respondent has conducted "industrial activities" within the meaning of 40 C.F.R. § 122.26(b)(14)(vi) at the Facility since 2002.
39. Respondent failed to apply for an individual NPDES permit or to file a notice of intent to be covered by the MSGP until January 2, 2009 and received coverage under the MSGP on February 1, 2009.
40. Respondent prepared a SWPPP dated January, 2009.
41. Since 2002, Respondent has discharged stormwater from outfalls at the Facility into the Piscataqua River during wet weather events.
42. Monthly monitoring of two of the outfalls discharging from the Facility to the Piscataqua River (Outfalls 2 and 4) was conducted by the McGuire Group, Inc., on behalf of Pease Development Authority.

COUNT 1: UNAUTHORIZED DISCHARGE OF PROCESS WATER

47. The Complaint incorporates Paragraphs 1 through 46 by reference.
48. The discharge of dust suppression wastewater to the Piscataqua River October 1, 2006 to April 30, 2011 without authorization under any NPDES permit violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).
49. Pursuant to 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, and the 2008 Civil Monetary Penalty Inflation Adjustment Rule effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 11 2008)), for each violation occurring through January 12, 2009, Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the violation continued; and, for each violation that occurred after January 12, 2009, Respondent is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day during which the violation continued, up to a maximum of one hundred seventy-seven thousand five hundred dollars (\$177,500).
50. Based on the foregoing allegations, EPA is seeking a penalty from Respondent for at least 111 days of violation under Count 1 up to a maximum of \$177,500.

58. Respondent has not taken corrective actions, reviewed and revised its SWPPP, or reported corrective actions to EPA, in violation of Parts 2.1; 2.2.1; 2.2.2.2; 3.1; 3.2; 3.4; 5.4; 6.2.4 and 7.2 of the 2008 MSGP.
59. Respondent has not controlled its discharges as necessary to meet applicable water quality standards in violation of Part 2.2.1 of the 2008 CGP.
60. Respondent has not conducted routine facility inspections and documented its findings between February 2009 and the present in violation of Part 4.1 of the 2008 MSGP.
61. Respondent did not collect quarterly stormwater samples for visual assessment between February 2009 and the present, in violation of Part 4.2.1 of the 2008 MSGP with the exception of August 2010 for the July through September 2010 quarter.
62. Respondent has not conducted comprehensive site inspections and documented its findings between February 2009 and the present in violation of Part 4.3 of the 2008 MSGP.
63. Respondent has failed to comply with the 2008 MSGP by failing to conduct benchmark monitoring between February 2009 and the present in violation of the 2008 MSGP Section 6 and 8.N.6.
64. Respondent has failed to comply with the 2008 MSGP by failing to conduct monitoring required by Part 6.2.4 between February 2009 and the present in violation of the 2008 MSGP Section 6.
65. From at least February 1, 2009 to the present, Respondent has discharged storm water associated with industrial activity to a "water of the United States" without

among other things, process waste water discharges and stormwater management.

A response to EPA's information request was due on May 11, 2011.

70. Respondent provided partial responses to the information request by correspondence dated April 24, 2011, May 17, 2011, May 13, 2011, and September 27, 2011.
71. Such partial response was inadequate.
72. By failing to provide an adequate response to an information request, Respondent violated Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), from at least May 12, 2011 through the present.
73. Pursuant to 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, and the 2008 Civil Monetary Penalty Inflation Adjustment Rule effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 11 2008)), for each violation occurring through January 12, 2009, Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the violation continued; and, for each violation that occurred after January 12, 2009, Respondent is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day during which the violation continued, up to a maximum of one hundred seventy-seven thousand five hundred dollars (\$177,500).
74. Based on the foregoing allegations, EPA is seeking a penalty from Respondent for at least 142 days of violation under Count 3 up to a maximum of \$177,500.

2008 MSGP benchmark standards for aluminum, copper, iron, lead, zinc, chemical oxygen demand, and total suspended solids TSS.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

78. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of any proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present evidence at the hearing.
79. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to this Complaint.

80. Pursuant to Section 22.5(c)(4) of the enclosed Consolidated Rules of Practice, the following individual is authorized to receive service on behalf of EPA:

In the Matter of: Grimmel Industries, L.L.C.
Docket No. CWA 01-201-0036

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, Massachusetts 02109-3912

Copy by certified mail, return receipt requested

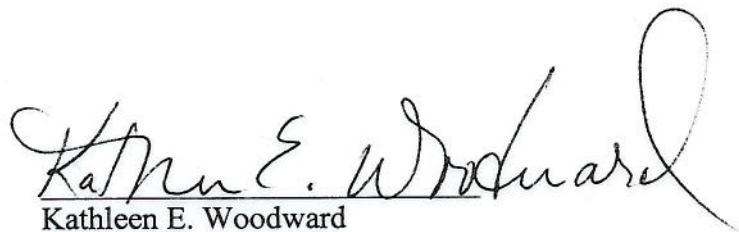
Betty and Gary Grimmel, Owners
Grimmel Industries, L.L.C.
80 Pejepscot Village
Topsham, Maine 04086-6194

Copy by first-class mail to:

Harry T. Stewart, P.E., Director
Office of Water
New Hampshire Department of Environmental Services
P.O. Box 95
Concord, New Hampshire 03302

James T. Kilbreth, Esq.
Verrill Dana LLP
One Portland Square
Portland, Maine 04112-0586

Dated: September 30, 2011



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