

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2017 MAY 22 AM 11:59

IN THE MATTER OF)
)
Pierce Lumber, Inc.)
)
)
)
Respondent)
_____)

Docket No. CWA-07-2017-0113

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 9 of the Consent Agreement/Final Order is authorized in this proceeding.

Dated: May 22, 2017

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

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

ENVIRONMENTAL PROTECTION AGENCY-REGION 7

2017 MAY 22 AM 11:59

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Pierce Lumber, Inc.) Docket No. CWA-07-2017-0113
)
)
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 Pierce Lumber, 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 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 violated 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 is the owner and operator of a lumber sawmill and planing mill located at 1629 13th Street, Belle Plaine, Iowa.

Statutory and Regulatory Framework

5. 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 (“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 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2, and which include tributaries to waters of the United States.

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 a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. 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.

10. 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity,” in part, as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas.”

11. 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(c) requires 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 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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

FACTUAL ALLEGATIONS

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

14. At all times relevant to this action, Respondent was the owner and operator of a lumber sawmill and planing mill (“Facility”), comprised of approximately 18.5 acres, and located at 1629 13th Street, Belle Plaine, Iowa.

15. The Facility 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).

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

17. 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 CWA, 33 U.S.C. § 1342.

18. Respondent’s Facility is adjacent to a railroad drainage ditch. The ditch flows approximately one-half mile to an unnamed tributary. The unnamed tributary flows approximately 3.2 miles to the Iowa River. According to an August 19, 2016, response by the Facility’s owner, the railroad ditch has year-round flow. The drainage ditch, unnamed tributary and Iowa River are all “waters of the United States,” as that term is defined in 40 C.F.R. § 232.2.

19. The IDNR issued NPDES Permit No. IA-0440-0314 to Respondent on October 1, 1992. The permit will expire on October 1, 2018. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Facility.

20. On May 5 and 6, 2016, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a), inspected the Facility to determine Respondent’s compliance with its NPDES permit and the CWA.

ALLEGATIONS OF VIOLATION

Count 1: Unauthorized Discharges

21. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with a NPDES permit. Part III(A) of Respondent’s NPDES permit requires that discharges covered by the permit shall be composed entirely of storm water.

22. During the EPA inspection, the inspector identified, among other potential sources of pollution, releases other than those composed entirely of stormwater, which include a

non- stormwater discharge of process wastewater from an overflow pipe from the pre-dryer building, and a discharge of non-stormwater from the walnut steamer building.

23. Based on the size of the Facility, the distance from the Facility to the railroad ditch and unnamed tributary, and the slope and condition of the land across that distance, stormwater containing pollutants from the Facility discharged into the railroad ditch and unnamed tributary during significant precipitation events. Unauthorized discharges are violations of Respondent's NPDES permit and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2: Inadequate Stormwater Pollution Prevention Plan

24. Part III(C) of Respondent's NPDES permit requires Respondent to develop a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP must include, among other things, identification of potential pollutant sources, description of stormwater management controls for identified pollutant sources, and an implementation plan.

25. During the EPA inspection, the inspector identified black walnut process wastewater areas and outdoor storage of fuels. A review of the 2008 SWPPP revealed that these site conditions and pollutant sources were not represented in the SWPPP.

26. Part III(C) of Respondent's NPDES permit requires Respondent to develop a plan that "shall describe and ensure the implementation of practices which will be used to reduce pollutants in storm water discharges."

27. The SWPPP did not describe any Best Management Practices to control pollutants from activities conducted on site.

28. Respondent's failure to include all required components of the SWPPP is a violation of a NPDES permit condition established pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3: Failure to Update the SWPPP

29. Part III(C)(3) of Respondent's NPDES permit states that Respondent shall amend the SWPPP to reflect changes at the Facility including operational or maintenance changes if the SWPPP is ineffective at controlling pollutants in stormwater.

30. During the EPA inspection, the inspector found the Facility had not updated or made any changes to the SWPPP since its 2008 effective date. Ground discoloration from the black walnut process wastewater areas and fuel spills surrounding fuel storage areas demonstrate that the SWPPP was ineffective at controlling pollutants in stormwater.

31. Respondent's failure to update the SWPPP is a violation of a NPDES permit condition established pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4: Failure to Conduct Visual Stormwater Inspections

32. Part III(C)(4) and (5) of Respondent's NPDES permit states the permittee shall, at a minimum, inspect equipment and plant areas no less than once a year, to include inspection of potential pollutant source areas, and stormwater management controls.

33. During the EPA inspection, Respondent acknowledged that visual inspections were not conducted by the Facility as required by the permit.

34. Respondent's failure to conduct visual stormwater inspections is a violation of a NPDES permit condition established pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5: Failure to Conduct Employee Training

35. Part III(B)(8) of Respondent's NPDES permit requires employee training to inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan.

36. During the EPA inspection, a review of Respondent's records indicated that the Respondent had not conducted SWPPP training as required by the NPDES permit.

37. Respondent's failure to conduct employee training is a violation of a NPDES permit condition established pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6: Inadequate Maintenance and Good Housekeeping Practices

38. Part III, Sections (C)(4), B(3) and B(4) of Respondent's NPDES permit require Respondent to maintain stormwater management devices, plant equipment, and inspect equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges to surface waters, as well as keeping a clean and orderly facility.

39. During the EPA inspection, the inspector found contaminated soil piles without proper containment, unlabeled barrels, and significant ground discoloration in areas throughout the Facility.

40. Respondent's failure to properly maintain stormwater controls and good housekeeping practices are violations of a NPDES permit condition established pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

CONSENT AGREEMENT

41. 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.

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

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

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

45. 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.

46. 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.

47. 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.

48. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 47 above, of this CA/FO.

PENALTY

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

49. Respondent shall pay a civil penalty of Twelve Thousand dollars (\$12,000). 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.

50. 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.

Reservation of Rights

51. 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.

52. With respect to matters not addressed in this CA/FO, 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.

Parties Bound

53. 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

54. This CA/FO 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



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Date

5/15/17



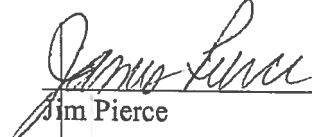
Chris Muehlberger
Assistant Regional Counsel

Date


5.15.17

RESPONDENT:


For Pierce Lumber, Inc.:



Jim Pierce



Title



Date

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.

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

May 22, 2017

Date

IN THE MATTER Of Pierce Lumber, Inc., Respondent
Docket No. CWA-07-2017-0113

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 via Email to Complainant:

muehlberger.christopher@epa.gov

Copy via First Class Mail to Respondent:

James E. Pierce, Registered Agent
1629 13th Street
Belle Plaine, Iowa 52208

and email to Respondent:

PIERCELOGS@hotmail.com

Dated: 5/22/17

A handwritten signature in cursive script that reads "Kathy Robinson". The signature is written in black ink and is positioned above a horizontal line.

Kathy Robinson
Hearing Clerk, Region 7