

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2023-0113
Scrap Management, LLC d/b/a)	
Rivers Edge Scrap Management,)	
)	ADMINISTRATIVE ORDER
Respondent)	ON CONSENT
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

Jurisdiction

1. This Administrative Order on Consent (“Order”) is issued pursuant to the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(a)(3), to Respondent Scrap Management, LLC d/b/a Rivers Edge Scrap Management (“Respondent”).
2. The EPA and Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the objective 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.”
3. It is the parties’ intent through entering into this Order to address Respondent’s violations of its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater. As set forth in this Order, the parties have reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and their NPDES permit.
4. 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 Order, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual or legal allegations in this Order, except that Respondent admits the jurisdictional allegations herein. Respondent 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 on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701–706.

Parties

5. The authority to take action under Section 309(a) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”) with concurrence by the Office of Regional Counsel.

6. Respondent Scrap Management, LLC d/b/a Rivers Edge Scrap Management is and was at all relevant times a limited liability company under the laws of the state of Kansas.

Statutory and Regulatory Framework

7. 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 a NPDES permit issued pursuant to that Section.

8. 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.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States.”

10. 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.

11. 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.

12. 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.

13. In part, 40 C.F.R. § 122.26(b)(14)(vi) defines “industrial activity” as including “Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

14. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402

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

15. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA or condition or limitation of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, requiring such person to comply.

EPA's General Allegations

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

17. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the facility at 836 S. 26th Street, Kansas City, Kansas 66106 (hereinafter the "Site" or "Facility"), which occupies 4.7718 acres. Respondent's Facility accepts and processes ferrous and non-ferrous metals from commercial and private sources.

18. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's Facility via the southeast corner of the Site, entering the Unified Government of Wyandotte County and Kansas City, Kansas' Municipal Separate Storm Sewer System ("MS4") and the Kansas River.

19. The 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 the CWA, 33 U.S.C. § 1362(14).

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

21. The Kansas River is a traditionally navigable water and a "water of the United States."

22. Stormwater runoff from Respondent's industrial activity at the Site 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), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. On February 6, 2015, KDHE granted authorization to Respondent for stormwater discharges associated with industrial activity under Kansas' NPDES General Permit, state permit number G-KS27-0050, federal permit number KSR000952 (the "Permit"). Respondent submits a renewal form along with a permit fee each year for continuing coverage under Kansas' NPDES

General Permit. The current NPDES General Permit is effective from November 1, 2021, to October 31, 2026.. This NPDES General Permit governs Respondent's stormwater discharges that are associated with industrial activity at the Site, including the recycling and reclamation of materials.

25. The principal requirement of the NPDES Permit is for the owner and operator to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP" or "SWP2"). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from the construction activities, describe and ensure the implementation of best management practices ("BMPs") that will be used to reduce the pollutants in stormwater discharge associated with construction activities at the construction Site, and to assure compliance with the terms and conditions of the Permit.

26. On April 25, 2022, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Site to determine Respondent's compliance with the NPDES permit and the CWA. During the EPA inspection, the EPA inspector requested copies of documents related to the Permit, including the Site's SWPPP, toured the Site, and photographed various stormwater-related areas.

27. On April 26, EPA personnel returned to the Site, at which point Respondent was able to provide a copy of its SWPPP. EPA personnel conducted an exit interview with Respondent's staff on May 4, 2022.

EPA's Allegations

Count 1

Failure to Select, Install, Utilize, Operate, and/or Maintain Site Specific Structural BMPs

28. The facts stated in Paragraphs 1 through 27 above are re-alleged and incorporated herein by reference.

29. Part 2.2 of the Respondent's NPDES Permit states "The SWP2 Plan shall evaluate BMPs from each of three major classes: managerial/administrative BMPs, structural control BMPs and non-structural control BMPs" and "the permittee shall review, evaluate, select, install, utilize, operate and maintain the BMPs in accordance with best professional judgement, generally accepted and scientifically defensible guidance and the concepts and methods as described in Environmental Protection Agency guidance documents".

30. During the EPA Inspection, the inspector confirmed, based on his review of the records provided and visual observations at the site, that structural control BMPs did not exist on site.

31. The Respondent's failure to select, install, utilize, operate, and maintain site specific BMPs is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 2

Failure to Ensure Good House Keeping and Spill Prevention

32. The facts stated in Paragraphs 1 through 31 above are re-alleged and incorporated herein by reference

33. NPDES Permit Section 2.4.3 and SWPPP Section 3 require good housekeeping techniques and spill prevention practices.

34. During the EPA Inspection, the inspector observed the following failures to implement good housekeeping and spill prevention practices in accordance with the NPDES permit and SWPPP:

- a. Outside areas were not maintained in a clean and orderly manner.
- b. There was significant ground discoloration near the vicinity of a 50 gallon drum containing used lubricants.
- c. The 500-gallon off-road diesel fuel tank and the 50-gallon drum did not have secondary containment.
- d. Car batteries were seen stored outside on the ground.

35. The Respondent's failure to ensure good housekeeping and spill prevention practices are a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 3

Failure to Retain the SWPPP Onsite

36. The facts stated in Paragraphs 1 through 35 above are re-alleged and incorporated herein by reference.

37. NPDES Permit Sections 2.1 states "The SWP2 Plan is to be retained on site and made available to KDHE, EPA, or MS4 upon request".

38. During the EPA Inspection, the Respondent did not have the SWPPP available upon the inspector's request, however the respondent provided a copy of the SWPPP the next day.

39. The Respondent's Failure to ensure the SWPPP was available onsite is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 4

Inadequate and Outdated SWPPP

40. The facts stated in Paragraphs 1 through 39 above are re-alleged and incorporated herein by reference.

41. NPDES Permit Part 2 establishes the required elements of the SWPPP.

42. The EPA Inspection and review of the SWPPP confirmed the SWPPP did not include the following required elements:

- a. Updated Facility Description.
- b. Site Map with all requirements listed in NPDES Permit Section 2.4.2.b.
- c. Updated Section 1.6 of SWPPP referencing the correct Multi-Sector General Permit.
- d. A Specific Inventory of Exposed Materials as required by NPDES Permit Section 2.4.2.c.
- e. A specific and adequate Risk Identification and Summary of Potential Pollutant Sources as required by NPDES Permit Section 2.4.2.e.
- f. Spill Prevention and Response Procedures with all information required in NPDES Permit Section 2.4.3.c.
- g. Frequency of Inspections and Visual Examinations of Stormwater Quality as required by the NPDES Permit.

43. The Respondent's Failure to ensure an adequate and updated SWPPP is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 5

Failure to Conduct Employee's SWPPP Training

44. The facts stated in Paragraphs 1 through 43 above are re-alleged and incorporated herein by reference.

45. NPDES Permit Section 2.4.3.e and SWPPP Section 3.5 require Employee training programs to inform personnel responsible for implementing activities identified in the SWP2 Plan or otherwise responsible for stormwater management, at all levels of responsibility, of the components and goals of the SWPP. The SWPP shall provide for training existing and new staff.

46. During the EPA Inspection, the Inspector confirmed, based on his records review, Scrap Management failed to conduct employee SWPPP training.

47. The Respondent's Failure to conduct employee's SWPPP training is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 6

Failure to Conduct and/or Document Routine Facility Inspections, Comprehensive Annual Site Compliance Evaluations, and Annual Visual Examinations of Stormwater Discharges

48. The facts stated in Paragraphs 1 through 47 above are re-alleged and incorporated herein by reference.

49. NPDES Permit Section 2.4.3.d states trained personnel shall "inspect at appropriate intervals, (inspection frequency shall be stated in SWP2 Plan, but at a minimum quarterly inspections shall be performed), designated equipment and storage areas for raw material, finished product, chemicals, recycling, equipment, paint, fueling and maintenance; and loading, unloading, and waste management areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. The inspection report shall include completion dates for correction of all deficiencies. Records of inspections shall be maintained on-site or in a readily accessible location for at least three years after the date of the inspection."

50. NPDES Permit Section 2.4.4 requires at a minimum an annual comprehensive site compliance evaluation. NPDES Permit Section 2.4.4 establishes the requirements of this evaluation and requires the evaluations to be kept with the SWPPP.

51. NPDES Permit Section 2.4.5 states "Visual Examination of Stormwater Quality: The permittee shall periodically, (frequency shall be stated in SWP2 Plan, but at a minimum of once per year) perform and document a visual examination of a stormwater discharge associated with industrial activity from each identified stormwater outfall."

52. The EPA Inspection and corresponding records review confirmed the that Respondent had failed to either conduct and/or document routine facility inspections, comprehensive annual site compliance evaluations, and annual visual examinations of stormwater discharges as required by the NPDES Permit.

53. The Respondent's failures to conduct and/or document routine facility inspections, comprehensive annual site compliance evaluations, and annual visual examinations of stormwater discharges are violations of the conditions and limitations of the Respondent's NPDES Permit.

Order for Compliance on Consent

54. 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.

55. In accordance with this Order and within thirty (30) days of the Effective Date, Respondent shall provide the EPA with an updated and accurate SWPPP for the Site which shall include:

- a. An accurate list and description of all BMPs implemented at the Site; and
- b. Accurate map(s) which depict the location of all implemented BMPs and flow of stormwater discharge from the Site.

56. For any BMPs identified on the SWPPP submitted under paragraph 55 but which have not been implemented at the time of the SWPPP's submittal, Respondent shall submit, within forty-five (45) days of the Effective Date, a work plan which outlines the timeline for such implementation.

57. After review of Respondent's submittals required by this Order, the EPA may provide written comments and suggestions regarding such submittals. Review and comment on the submissions by the EPA does not relieve Respondent of the responsibility to comply with the Permit, the CWA, applicable State law, or this Order.

58. In accordance with this Order, the Respondents shall take all necessary actions within ninety (90) days of the Respondent's submission of a work plan, as outlined in paragraph 56 above, to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its industrial stormwater NPDES Permit.

59. *Completion Report.* Once the work has been completed, Respondent shall submit a completion report to the EPA and KDHE, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete (hereinafter the "Completion Report"). The Completion Report must be submitted within thirty (30) days after work has been completed and is subject to EPA approval.

60. After review of Respondent's submittals required by this Order, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are necessary and may modify this Order or initiate a separate enforcement action, as appropriate.

Reports/Submissions

61. **Submittals.** All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 62 below, shall be submitted by electronic mail to:

Adam Hendrickson, or his successor
hendrickson.adam@epa.gov
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

62. 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.

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

Shelly Shores-Miller
shelly.shores-miller@ks.gov
Kansas Department of Health and Environment
1000 SW Jackson Street
Topeka, Kansas 66612

64. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I 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 who manage the system, or those persons directly 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 and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

65. Respondent's failure to comply with the terms of this Section 309(a)(3) Administrative Order on Consent may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the Act and failed to comply with the terms of the Order.

66. Compliance with the terms of this Order shall not relieve 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.

67. 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

68. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's Site, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

69. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary authority to be invalid, the application to 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

70. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

71. At the EPA's sole discretion, extensions of the compliance schedules / deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual

agreement of the parties, pursuant to a written amendment signed by each party.

Termination

72. 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:

Date

DAVID
COZAD

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COZAD
Date: 2024.02.12
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David Cozad
Director
Enforcement and Compliance Assurance Division

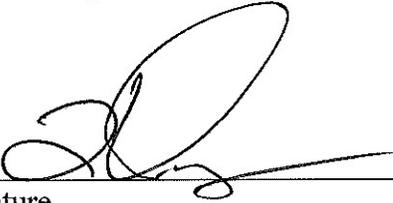
Date

Breedlove,
Dan

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Breedlove, Dan
Date: 2024.02.12
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Sam Bennett
Office of Regional Counsel

For the Respondent, Scrap Management, LLC d/b/a Rivers Edge Scrap Management:



Signature

1/24/21

Date

Tim Kates

Name

President

Title

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Administrative Order on Consent was sent this day in the following manner to the addressees:

Regional Hearing Clerk Region 7:

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

Copy emailed to Respondent:

Matt Johnson
Scrap Management, LLC d/b/a Rivers Edge Scrap Management
mattj@kvco.net

Copy emailed to Attorney for Complainant:

Sam Bennett
U.S. Environmental Protection Agency Region 7
bennett.sam@epa.gov

Copy emailed to the Kansas Department of Health and Environment:

Shelly Shores-Miller
Kansas Department of Health and Environment
shelly.shores-miller@ks.gov

Date