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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
)
PACIFIC HIDE & FUR DEPOT,)
d/b/a PACIFIC STEEL & RECYCLING, INC.)
Ponderay, Idaho,)
)
Respondent.)

DOCKET NO. CWA-10-2016-0145
**CONSENT AGREEMENT AND
FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Pacific Hide & Fur Depot, doing business as Pacific Steel & Recycling, Inc., (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. Section 301(a) of the Act prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2. Section 502(7) of the Act defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and Section 502(12) of the Act defines “navigable waters” to include “waters of the United States.” 33 U.S.C. § 1362(7), (12).

3.3. Section 502(6) of the Act defines a “pollutant” to include, *inter alia*, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water. 33 U.S.C. § 1362(6).

3.4. Section 502(14) of the Act defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure ... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.5. Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all impoundments and tributaries to those waters. 40 C.F.R. § 122.2.

3.6. The CWA specifies that stormwater discharge “associated with industrial activity” (i.e. industrial stormwater) includes the discharge from any conveyance which “is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.” Industrial stormwater is a type of pollutant. CWA § 402(p), 33 U.S.C. § 1342(p); 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(b)(14).

3.7. The Administrator of EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions that EPA determines are necessary. CWA § 402(a), 33 U.S.C. § 1342(a).

3.8. An NPDES permit is required for any stormwater “discharge associated with industrial activity.” CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(a)(1)(ii).

3.9. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations for the NPDES permit requirements for industrial stormwater discharges at 40 C.F.R. § 122.26.

3.10. EPA issues NPDES Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity (“MSGPs”) to authorize certain discharges of stormwater associated with industrial activities, provided that appropriate stormwater controls are designed, installed, and maintained, in conformance with the permit criteria. CWA § 402(p), 33 U.S.C. § 1342(p).

3.11. To be authorized to discharge under an applicable MSGP, the discharger must first prepare and submit a complete and accurate Notice of Intent (“NOI”), following the requirements specified by that MSGP, in which the applicant certifies that the applicant meets the eligibility criteria and will comply with the conditions and requirements set forth in that MSGP.

3.12. Authorization to discharge under Permit No. IDR050000 (“2008 MSGP”) was available to facilities with industrial activity in the State of Idaho, except for facilities in Indian Country, for the period of February 26, 2009, through September 29, 2013.

3.13. On September 30, 2013, coverage under the 2008 MSGP was administratively continued until a new MSGP was issued.

3.14. Authorization to discharge under Permit No. IDR050000 (“2015 MSGP”) was available to facilities with industrial activity in the State of Idaho, except for facilities in Indian Country, for the period of August 12, 2015, through June 4, 2020.

Factual Background

3.15. At all times relevant to this action, Respondent was a general business corporation organized under the laws of the State of Montana, and is a “person” within the meaning of the Act. CWA § 502(5), 33 U.S.C. § 1362(5).

3.16. Respondent owns a facility (“Facility”), located in Ponderay, Idaho, where Respondent sells new products such as steel, galvanized and plastic culverts, rebar, and other products. At the Facility, Respondent also collects, handles, sorts, processes, and transports various types of recyclable materials including ferrous scrap materials (such as automobiles and motor blocks), non-ferrous scrap materials (such as aluminum, copper, brass, lead, stainless steel and white goods) and aluminum beverage cans, cardboard, and paper.

3.17. Respondent conducts industrial activity within Standard Industrial Classification (“SIC”) code 5093, Division Wholesale Trade, Scrap and Waste Materials. 40 C.F.R. § 122.26(b)(14)(vi).

3.18. Respondent submitted an NOI to EPA for coverage under the 2008 MSGP for the Facility on April 23, 2009, which identified Respondent as the operator.

3.19. The Facility was authorized under the 2008 MSGP with unique identifier IDR05C142 to release discharges conforming to the requirements of the 2008 MSGP to a ditch discharging into Sand Creek at two locations identified in the Facility’s Stormwater Pollution Prevention Plan (“SWPPP”): Outfall 001 and Outfall 002.

3.20. Outfalls 001 and 002 are each a “point source” within the meaning of the CWA. CWA § 502(14), 33 U.S.C. § 1362(14).

3.21. Sand Creek, which flows into Lake Pend Oreille, is a “navigable water” and “waters of the United States,” and is subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 122.2.

3.22. EPA conducted an inspection at the Facility on July 15, 2015, to evaluate, *inter alia*, the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26 and the 2008 MSGP.

Failure to Sample Outfall 2

3.23. Pursuant to Parts 6.2.1.2 and 8.N.5 of the 2008 MSGP, Respondent was required to conduct benchmark monitoring for total suspended solids (“TSS”), chemical oxygen demand (“COD”), as well as total recoverable aluminum, total recoverable copper, total recoverable iron, total recoverable lead, and total recoverable zinc at Outfalls 001 and 002, on a quarterly schedule, for at least the first four full quarters of coverage. 2008 MSGP, Parts 6.2.1.2 and 8.N.5.

3.24. At the time of the inspection on July 15, 2015, Respondent had not sampled Outfall 002 to determine the benchmark concentrations of sector specific parameters in the Facility’s discharge. During this time, Respondent’s NOI continued to identify Outfall 002 as a discharge location.

3.25. **Violation:** Respondent’s discharge of pollutants from Outfall 002 into navigable waters of the United States was not authorized under the 2008 MSGP or any other NPDES permit, and was therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Submit a Hardness Value

3.26. If Respondent operated a Facility in an industrial sector subject to benchmark concentrations that were hardness-dependent, Respondent was required to submit a hardness value representative of the Facility's receiving water with Respondent's first benchmark report, consistent with procedures in Appendix J of the MSGP. 2008 MSGP, Parts 6.2.1.1 and 8.N.6.

3.27. Respondent did not submit a hardness value representative of the Facility's receiving water with its first benchmark report, nor had one been received by the date of the inspection, July 15, 2015.

3.28. **Violation:** Respondent's failure to submit to EPA a hardness value representative of the Facility's receiving water with Respondent's first benchmark report, consistent with procedures in Appendix J of the MSGP, was in violation of the monitoring requirements in Parts 6.2.1.1 and 8.N.6 of the MSGP.

Failure to Review Control Measures or Take Corrective Action

3.29. Respondent was required to conduct benchmark monitoring for the first four full quarters of coverage. 2008 MSGP Part 6.2.1.2. Part 8.N.6 of the 2008 MSGP specified sector specific benchmark values for parameters, including total recoverable zinc. Additionally, Part 9.10.3.2 of the 2008 MSGP, regarding follow-up monitoring for benchmark concentrations, establishes that, "[i]f any of the four quarterly samples exceed the benchmark, then the permittee must follow the additional requirements in Part 6.2.1.2 of the MSGP."

3.30. Under Part 6.2.1.2, in the event that Respondent determined that modifications were necessary to meet the effluent limits in the 2008 MSGP, Respondent was required to either make the necessary modifications and continue quarterly monitoring until it had completed four

additional quarters of monitoring for which the average did not exceed the benchmark; or make a determination that no further pollutant reductions were technologically available and economically practicable and achievable in light of best industry practice pursuant to Part 2 of the 2008 MSGP.

3.31. Respondent conducted quarterly samples of sector specific pollutants, including total recoverable zinc at Outfall 001 on six occasions. Zinc levels exceeded its benchmark on three sampling dates: September 24, 2013; March 6, 2014; and March 25, 2015. 2008 MSGP, Parts 6.2.1.2 and 8.N.6.

3.32. Between September 24, 2013 and July 15, 2015, Respondent did not conduct a review of control measures or incorporate corrective actions to address the three zinc benchmark exceedances.

3.33. **Violation:** Respondent's failure to review control measures or incorporate corrective actions to address the three zinc benchmark exceedances, was in violation of the corrective action requirements of Part 9.10.3.2, as prescribed in Part 6.2.1.2 of the 2008 MSGP.

SWPPP Deficiencies

3.34. Part 5 of the 2008 MSGP required Respondent to develop an SWPPP for the Facility that included, among others, a copy of the Notice of Intent submitted to EPA, a copy of the MSGP, staff members that comprised the facility's stormwater pollution prevention team (including their name, title, and individual responsibilities), a site map, and monitoring documentation. 2008 MSGP Parts 5.1.1, 5.1.2, 5.1.5.2, and 5.4. Required contents of the site map include direction of stormwater flows using arrows, location of all existing structural control measures, and locations of all stormwater monitoring points. 2008 MSGP Part 5.1.2. Required

monitoring documentation include locations where samples are collected, any determination that two or more outfalls are substantially identical, parameters for sampling and the frequency for sampling each parameter, the monitoring schedule for the Facility, any numeric control values (such as benchmark values) applicable to discharges from each outfall, and procedures (e.g., responsible staff, logistics, laboratory) for gathering storm event data. 2008 MSGP Part 5.1.5.2

3.35. At the time of the inspection on July 15, 2015, the Facility's SWPPP lacked a copy of the Notice of Intent and the MSGP. The Facility's SWPPP identified employees by name that no longer worked at the Facility as members of the stormwater pollution prevention team. The Facility's SWPPP also lacked arrows showing that stormwater flowed southerly toward Outfalls 1 and 2, did not include stormwater retention ponds located near the northeast corner of the property, and did not identify where benchmark samples are collected. At the time of the inspection on July 15, 2015, the Facility's SWPPP lacked additional monitoring documentation required by the MSGP. In particular, the Facility's SWPP failed to include a sample schedule, numeric control values, and procedures for gathering storm event data.

3.36. **Violation:** Respondent, by not including information required to be in the SWPPP, violated Part 5 of the 2008 MSGP.

IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.
- 4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well

as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$19,618.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chris Gebhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In

any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. *Interest.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/25/16

FOR RESPONDENT:

K. Farner

KIRBY FARNER, H.S.E.T. Director
Pacific Hide & Fur Depot
d/b/a Pacific Steel and Recycling, Inc.

DATED:

9/2/2016

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

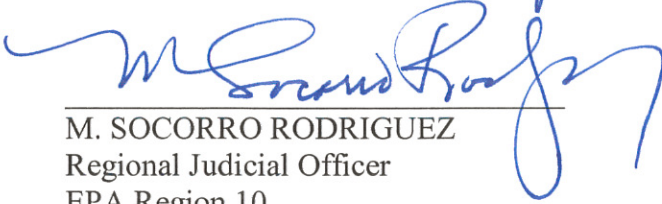
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 15th day of September, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: PACIFIC HIDE & FUR DEPOT, d/b/a PACIFIC STEEL & RECYCLING, INC., DOCKET NO.: CWA-10-2016-0145** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Heather Mapes
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kirby Farner
Pacific Hide & Fur Depot
d/b/a Pacific Steel and Recycling, Inc.
1000 Triangle Drive
Ponderay, Idaho 83852

DATED this 16 day of September, 2016



Signature

Teresa Young
Regional Hearing Clerk
EPA Region 10



Region 10: the Pacific Northwest

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Public Notice: Proposed Penalty Against Pacific Hide and Fur Depot dba Pacific Steel and Recycling, Inc. for Clean Water Act Violations

Description

Pursuant to Section 309(g)(4) of the Clean Water Act (CWA), the EPA is providing public notice of the proposed penalty described below. In order to provide opportunity for public comment, the EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to commence an administrative penalty action against Pacific Hide & Fur Depot dba Pacific Steel & Recycling, Inc. for violations of the CWA by its Ponderay, Idaho facility. The facility is covered by the National Pollutant Discharge Elimination System (NPDES) Stormwater Multi-Sector General Permit (MSGP). CWA violations include Stormwater Pollution Prevention Plan deficiencies, failures to monitor, and failures to review control measures or add corrective actions before July 16, 2015. EPA proposes to assess a penalty of \$19,618.

This is a Class II administrative penalty proceeding, governed by Section 309(g)(2)(B) of the CWA and the procedural rules found at 40 CFR Part 22. The requirements that apply to public comment and participation are set forth in 40 CFR 22.45.

For additional information about this action, please contact [Chris Gebhardt](mailto:gebhardt.chris@epa.gov) (gebhardt.chris@epa.gov), 206-553-0253.

Comments Accepted

Persons wishing to comment on the EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address below within 30 days of the date of this notice (September 4, 2016).

Public Notice Summary

Action: Penalty assessment under the Clean Water Act

Date of Notice: August 5, 2016

Comment Period Ends: September 4, 2016

Case Name: Pacific Hide & Fur Depot dba Pacific Steel & Recycling, Inc.

Complaint Docket Number: CWA-10-2016-0145

How to Submit Comments: In accordance with 40 CFR 22.45, anyone wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. Please provide your name, complete mailing address, and any comments you have on this action.

Regional Hearing Clerk:

Teresa Luna, Regional Hearing Clerk
 U.S. Environmental Protection Agency
 Region 10 (ORC-113)
 1200 Sixth Avenue, Suite 900
 Seattle, Washington 98101-3140
 (206) 553-1632

Complainant:

Edward J. Kowalski, Director
 Office of compliance and Enforcement
 U.S. Environmental Protection Agency
 Region 10 (OCE-101)
 1200 Sixth Avenue, Suite 900
 Seattle, Washington 98101-3140

Respondent:

Pacific Hide & Fur Depot dba Pacific Steel & Recycling, Inc. (Corporate HQ)
 5 River Drive South
 Great Falls, Montana 59405

Location of Facility: Pacific Steel & Recycling, Inc. - Ponderay Facility, 1000 Triangle Drive, Ponderay, Idaho 83852

Applicable Permit Number: IDR05C142

Business/activity of Respondent: Metal recycling and new steel products retail