

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2017 MAY 12 AM 10:47

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)	
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)	
Rosebud Recycling, LLC)	ADMINISTRATIVE ORDER
229 N. Hillside Drive)	FOR COMPLIANCE ON CONSENT
Mission, South Dakota 57555)	
)	
Respondent.)	Docket No. CWA-08-2017-0013

INTRODUCTION

1. This Administrative Order for Compliance on Consent (Consent Order) is entered into voluntarily by Rosebud Recycling, LLC (Respondent) and the United States Environmental Protection Agency (EPA).
2. The EPA has authority to issue this Consent Order pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). This authority has been properly delegated to the undersigned EPA official.
3. The findings in paragraph numbers 4 through 44, below, are made solely by the EPA. In signing this Consent Order, the Respondent neither admits nor denies the findings. Without any admission of liability, the Respondent consents to issuance of this Consent Order and agrees to abide by all of its terms. The Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Respondent further agrees not

to challenge the jurisdiction of the EPA or the findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

FINDINGS OF FACT AND OF VIOLATION

The following findings apply to all times relevant to this action:

4. The Respondent is a South Dakota limited liability company; Damien Harmon is the owner and registered agent for the Respondent.
5. The Respondent is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
6. The Respondent operates its business at 229 North Hillside Drive, Mission, South Dakota (Site).
7. The Respondent owns and operates an automotive wrecking, scrap and waste material recycling facility at the Site (Standard Industrial Classification code 5093).
8. Standard Industrial Classification code 5093 includes establishments primarily engaged in breaking up, sorting, and wholesale distribution of scrap and waste materials and automotive wreckers engaged in dismantling automobiles for scrap.
9. The Respondent is engaged in an "industrial activity" as defined by 40 C.F.R. § 122.26(b)(14). Specifically, the Respondent is "involved in the recycling of materials, including metal scrapyards, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093."
10. The Respondent is an "owner or operator" of a facility subject to regulation under the National Pollutant Discharge Elimination System (NPDES) program as defined in the regulations. 40 C.F.R. § 122.2.
11. The Site encompasses approximately 10 acres.

12. Scrap metal and recycling activities at the Site began in July 2013.
13. Storm water runoff, snow melt runoff, surface runoff, and drainage leave the Site and flow into the unnamed drainage approximately 300 feet south of the Site.
14. The unnamed drainage south of the Site is part of a drainage system that flows to Antelope Creek, which flows to Antelope Lake, which flows to the Keya Paha River, an interstate water that flows from South Dakota into Nebraska reaching the Missouri River, which is a navigable-in-fact, interstate waterway, within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
15. The runoff and drainage from the Site referenced in paragraph 13, above, are “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
16. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
17. According to the December 2006, “Industrial Storm Water Fact Sheet Series – Sector N: Scrap Recycling and Waste Recycling Facilities,” EPA-833-F-06-029, the potential pollutants of concern at scrap recycling and waste recycling facilities include, among others, oil and grease, lubricants, paint pigments or additives, heavy metals, transmission and brake fluids, fuel, battery acid, lead acid, antifreeze, benzene, chemical residue, heating oil, petroleum products, solvents, infectious/bacterial contamination, asbestos, metals, battery acid, oily wastes and chemical residue.
18. Each storm water discharge from the Site is a “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

19. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
20. In order to restore and maintain the integrity of the nation’s waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
21. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with a NPDES permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. part 122, or other specific authorization.
22. Section 402 of the Act, 33 U.S.C. § 1342, establishes a NPDES program, under which the EPA may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
23. More specifically, section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes that NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
24. Any person who discharges storm water associated with industrial activity to waters of the United States is required to seek NPDES permit coverage and to comply with the permit. 40 C.F.R. § 122.26(c).
25. The Site is located within the exterior boundaries of the Rosebud Indian Reservation.
26. The EPA directly implements the NPDES program in Indian Country in Region 8.

27. Effective June 4, 2015, the EPA issued a NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP). The MSGP authorizes discharges of storm water associated with industrial activities, if done in compliance with its terms and conditions. Dischargers may apply to the EPA for authorization to discharge under the MSGP for coverage.
28. Part 1.2 of the MSGP describes how to obtain authorization under the MSGP.
29. Part 5 of the MSGP describes the requirement to develop a Stormwater Pollution Prevention Plan (SWPPP) prior to submitting the Notice of Intent (NOI).
30. The Respondent has not sought or obtained a permit to discharge storm water from the Site under the applicable MSGP or an individual permit.
31. On November 7, 2016, the EPA issued a request for information (Request) to the Respondent pursuant to section 308 of the Act, 33 U.S.C. § 1318. Among other things, the Request asked the Respondent to provide the EPA with information regarding business activities taking place at the Site; chemicals used and/or stored onsite; storm water flow direction and the existence of any storm water controls to evaluate whether the Site required a permit.
32. The EPA received a response to the Request on December 6, 2016, stating that the Respondent runs an automotive wrecking, scrap and waste material recycling facility (Standard Industrial Classification code 5093) at the Site. The Respondent stated that it stored oil and antifreeze at the Site. The Respondent also stated that storm water flows from the Site into the drainage approximately 300 feet south of the Site.
33. The EPA has received reports from the Rosebud Sioux Tribe Environmental Protection Office stating that the Site contains storage drums with unknown contents, vehicles,

appliances, air conditioning units, scrap metal and other items for recycling that are exposed to storm water. The Rosebud Sioux Tribe Environmental Protection Office reports having received complaints about storm water from the Site flowing to the drainage south of the Site. For example, a rainbow-colored oily sheen was observed in the unnamed drainage south of the Site.

34. Respondent has discharged pollutants from the Site without authorization by the MSGP, any other applicable general permit, or any individual permit, in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER

35. Within 10 days of the effective date of this Consent Order (see paragraph 44 below), the Respondent shall submit written notice to the EPA of the Respondent's intent to comply with the requirements of this Consent Order.
36. Within 60 days of the effective date of this Consent Order, the Respondent shall:
- a. Develop and submit a SWPPP for the Site that is in compliance with the MSGP. The SWPPP shall be completed prior to submitting a NOI or applying for an individual permit. In accordance with part 5.4 of the MSGP, the Respondent must retain a copy of its current SWPPP at the Site in any accessible format.
 - b. Submit to the EPA a NOI for the Site to be covered under the MSGP and thereafter comply with all provisions of the MSGP or, alternatively, submit an application for an individual permit authorizing storm water discharges from the Site.
 - c. In accordance with parts 1.2.1.2 and 7.1 of the MSGP, submit the NOI electronically unless the Respondent has received a waiver from electronic reporting, in which case the Respondent may use the paper NOI form in Appendix G of the MSGP. The Electronic Notice of Intent (eNOI) system can be found at <https://www.epa.gov/npdes/electronic-notice-intent-enoi>. The Respondent must also provide a copy of the NOI to Christina Carballeda, at the address provided in paragraph 38.
37. All reports and information required by this Consent Order shall include the following

certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official:

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.

38. The Respondent shall send all written notices, documentation, and reports required by this Consent Order to the following:

Christina Carballal (8ENF-W-NP)
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
NPDES Enforcement Unit
1595 Wynkoop Street
Denver, Colorado 80202-1129

39. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondent in violation of this Consent Order to penalties as provided under the Act, 33 U.S.C. § 1319.

40. This Consent Order does not constitute a waiver of any other legal responsibility or liability of the Respondent.

41. This Consent Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or the Permit occurring before November 2, 2015, and \$52,414 per day for violations that occurred after November 2, 2015 and assessed on or after January 15,

2017. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.

42. Nothing in this Consent Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Consent Order or to relieve the Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.
43. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the relevant Respondent to the terms and conditions of this Consent Order.
44. This Consent Order shall be effective immediately upon the Respondent's receipt of a fully executed copy.

Date: _____

5/11/17

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

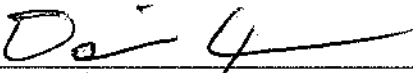
By: _____



Kimberly S. Opekar
Acting Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

ROSEBUD RECYCLING, LLC,
Respondent

Date: 4-18-17

By: 
Damien Harmon, Owner and Executive Manager