

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2017-0012
Pierce Lumber Inc.)	
)	
)	
Respondent)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance on Consent (Order) is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

2. The Respondent in this case is Pierce Lumber Inc. (Respondent).

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals 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.”

4. It is the Parties’ intent through entering into this Order to address noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. 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 Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor

denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also 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.

Statutory and Regulatory Framework

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.”

12. 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.

13. 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 BACKGROUND

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

15. 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 on 1629 13th Street, Belle Plaine, Iowa.

16. 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).

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

18. 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.

19. 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.

20. The Iowa Department of Natural Resources 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.

21. 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.

FINDINGS OF VIOLATION

Count 1: Unauthorized Discharges

22. 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.

23. 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.

24. 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 will discharge 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 SWPPP

25. Part III(C) of Respondent's NPDES permit requires Respondent to develop a Stormwater Pollution Prevention Plan. 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.

26. 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.

27. 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."

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

29. 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

30. 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.

31. 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.

32. 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

33. 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.

34. During the EPA inspection, Respondent acknowledged that visual inspections are not being conducted by the facility as required by the permit.

35. 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

36. 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.

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

38. 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

39. 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.

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

41. 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).

Order for Compliance

Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.

42. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary 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.

43. Within sixty (60) days of the effective date of this Order, Respondent shall provide EPA a written description and photo documentation of the actions it has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

44. Respondent shall submit to EPA a copy of the completed updated SWPPP within thirty (30) days of its completion, not to exceed sixty (60) days following the effective date of this Order.

45. Respondent shall submit to EPA copies of the training logs within thirty (30) days of the completion of SWPPP training. Training shall be conducted no more than sixty (60) days following the completion of the updated SWPPP.

46. Respondent shall submit to EPA a copy of the annual visual stormwater inspection report conducted for calendar year 2016, to be submitted to EPA by January 31, 2017.

47. All submitted documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to Angela Acord at acord.angela@epa.gov.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph to:

Angela Acord, Compliance Officer
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

GENERAL PROVISIONS

Effect of Compliance with the terms of this Order

48. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of his responsibility to obtain any required local, state, and/or federal permits.

49. 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. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by 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

50. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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

51. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial 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.

Parties Bound

52. This 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 Order.

Failure to Comply

53. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the Northern District of Iowa may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Act and for any violations of this Order.

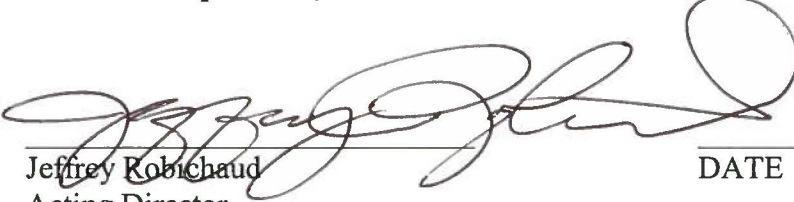
Effective Date

54. 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 EPA.

Termination


55. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

For the Complainant, United States Environmental Protection Agency, Region 7:



Jeffrey Robichaud
Acting Director
Water, Wetlands and Pesticides Division

DATE 3/16/17



Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

DATE 3.15.17

For the Respondent, Pierce Lumber Inc.

James Luce
Name

3/14/17
DATE

President
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

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

Ted Petersen, Section Chief
Iowa Department of Natural Resources
7900 Hickman Road Suite 200
Windsor Heights, Iowa 50324-4404.

Date

3-16-17

