

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

10 JUL 13 PM 1:00

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Sargent Pipe Company, Inc.)
1 North 1st Avenue)
Broken Bow, Nebraska 68822)

Respondent)

Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

) Docket No. CWA-07-2010-0125

) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7's Water, Wetlands, and Pesticides Division.

2. Respondent is Sargent Pipe Company, Inc., a corporation incorporated under the laws of Nebraska and authorized to conduct business in the State of Nebraska.

Statutory and Regulatory Framework

3. 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 only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. 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.

5. 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 storm water. Section 402(p) of the CWA requires, in part, that a discharge of storm water associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(xi) defines “storm water discharge associated with industrial activity,” in part, as facilities classified as Standard Industrial Classification 35 (Industrial and Commercial Machinery).

9. The Nebraska Department of Environmental Quality (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The NDEQ implemented a General Permit for the discharge of storm water under the NPDES, Permit No. NER000000 on September 18, 1997. This permit was administratively extended on August 28, 2002. The permit governs storm water discharges associated with industrial activity.

Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a facility known as Sargent Pipe Company, Inc., located at 1 North 1st Avenue, Broken Bow, Nebraska (the Site) with a SIC code of 3523/3561.

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into Muddy Creek. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Site has “storm water discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(xi), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharged pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Storm water runoff from Respondent’s construction 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).

18. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(xi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Respondent applied for and was issued NPDES permit coverage under the general permit described in paragraph 10 above. NDEQ assigned Respondent Permit Authorization No. NER000086 on July 31, 2001.

20. On May 13, 2010, EPA issued an Information Request under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Section D, subsection 1.a. of Respondent’s permit requires Respondent to develop, maintain, and implement a Storm Water Pollution Prevention Plan (SWPPP) for their facility.

23. Section D, subsection 7.b. of Respondent’s permit requires “existing sources shall complete and implement the SWPPP on or before the time authorization to discharge under the terms and conditions of this permit is granted.”

24. Respondent’s June 17, 2010, response to the Information Request indicated that a SWPPP for the facility has not been developed.

25. Respondent’s failure to develop an adequate SWPPP is a violation of Respondent’s Permit, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance

26. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 27 through 28.

27. Within thirty (30) days of the effective date of this Order, Respondent shall develop and implement a SWPPP which incorporates all applicable requirements set forth in the permit and submit the SWPPP to EPA for review in order to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with the terms of the permit.

28. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

29. All documents required to be submitted to EPA by this Order shall be submitted by mail to:

Mr. Michael Boeglin
Water Enforcement Branch
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

30. A copy of documents required to be submitted to NDEQ by this Order shall be submitted to NDEQ by mail to:

Mr. Steve Goans
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509-8922.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

31. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude 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.

32. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Section 309(b), (c), (d) or (g) of the Act, 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 EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

33. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, 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

34. 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.

Effective Date

35. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Termination

36. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 12th day of July, 2010.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Sarah LaBoda
Senior Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Loren Taylor, Advisor
Sargent Pipe Company, Inc.
P.O. Box 627
Broken Bow, Nebraska 68822

And via first class mail to:

Mr. Pat Rice
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509.

14 July 2010
Date

Kimberly Kaye