

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 2014 SEP 22 AM 8: 29
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) CONSENT AGREEMENT
City Wide Construction Products, Inc.) AND FINAL ORDER
1817 N. Farmers Branch Road)
Ozark, Missouri 65721) Docket No. CWA-07-2014-0002
)
Respondent.)
_____)

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and City Wide Construction Products, Inc. (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

Stipulations

Jurisdiction

1. This is an administrative action for the assessment of Class I civil penalty instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Sections 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder.

Parties

3. The Respondent is City Wide Construction Products, Inc., located at 1817 N. Farmers Branch Rd. Ozark, Missouri.

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), 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 it to the Director of the Air and Waste Management Division of EPA, Region 7 (“Complainant” or “EPA”).

Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges”

6. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

7. EPA subsequently promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

8. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Factual Background

9. Respondent is a corporation organized under the laws of Missouri. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

10. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act,

33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of City Wide Construction Products, Inc., located at 1817 N. Farmers Branch Rd., Ozark, Missouri.

11. The facility has an aggregate above-ground storage of 13,060 gallons of oil.

12. Respondent's facility is located near Farmers Branch Creek, navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

13. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

14. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

15. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

16. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

17. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

18. On or about April 26, 2012, EPA conducted an inspection of Respondent's facility.

Alleged Violations

19. Complainant hereby incorporates the allegations contained in paragraphs 1 through 18 above, as if fully set forth herein.

20. At the time of the April 2012 inspection, Respondent had failed to fully prepare and implement an SPCC Plan by November 10, 2010, as follows:

- (i) Respondent's Plan was not certified by a Professional Engineer, pursuant to 112.3(d), including statements which attest (i) that the PE or agent has visited and examined the facility; (ii) that the plan was prepared in accordance with good engineering practice including consideration of applicable industry standards and the requirements of 40 C.F.R. Part 1121 (iii) that procedures for required inspections and testing have been established; (iv) that the plan is adequate for the facility.

- (ii) Plan did not describe the physical layout of the facility and include a diagram that identifies: the location and contents of all regulated fixed oil storage containers, storage areas where mobile or portable containers are located, transfer stations, and connecting pipes, in violation of 40 C.F.R. 112.7(a)(3). In addition, the plan did not address, for each fixed container, the type of oil and storage capacity, and the methods of disposal of recovered material in accordance with applicable legal requirements, in violation of 40 C.F.R. 112.7(a)(3).
- (iii) Appropriate containment and or diversionary structures were not provided to prevent a discharge as described in 112.1(b), in violation of 40 C.F.R. 112.7(c) for the bulk storage containers at Respondent's facility. The SPCC Plan must be revised to include secondary containment, including what method of 11.27(c) secondary containment will be used in the fuel/oil transfer areas per the 112.7(c) requirements.
- (iv) Records of weekly inspections are not being maintained at the facility, in violation of 40 C.F.R. 112.7(c).
- (v) The SPCC Plan does not describe how to secure and control access to the oil handling, processing and storage areas, secure master flow and drain valves, 40 C.F.R. 112.7(g), prevent unauthorized access to starter controls on oil pumps, secure out-of-service and lading/unloading connections of oil pipelines.
- (vi) The Plan did not discuss conformance with applicable more stringent states rules, regulations, and guideless and other effective discharge prevention and containment procedures listed in 40 C.F.R. Part 112, in violation of 40 C.F.R. 112.7(j).
- (vii) Respondent's facility did not have secondary containment for the 2,500 gallon diesel tank and the 250 gallon used oil tank, in violation of 40 C.F.R. 112.8(c)(2). In addition, Respondent's SPCC Plan requires integrity testing every five years when the corrosion rate is not known. At the time of the inspection, no corrosion rate was identified for any tank and no integrity testing had been completed by Respondent, in violation of 40 C.F.R. 112.8(c)(6). In addition, appropriate qualifications for personnel performing integrity testing and inspections were not identified in Respondent's SPCC Plan, nor where overfill devices for all containers addressed in the SPCC Plan, in violation of 40 C.F.R. 112.12(c)

21. Respondent's failure to fully develop and implement a SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 23, violated 40 C.F.R. § 112.3.

22. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii),

EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

24. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

25. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

26. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

27. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with the CWA and all regulations promulgated thereunder.

28. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

29. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

30. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

31. Each signatory of this Agreement certifies that he or she is fully authorized to enter

into the terms of this Consent Agreement and Final Order.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of CWA alleged in this document.

33. The effect of the settlement described in Paragraph 32 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 27 above.

34. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

35. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

36. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

37. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 11201 Renner Boulevard, Lenexa, Kansas, 66219.

FINAL ORDER

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Ten Thousand Nine Hundred and Forty-Two Dollars (\$10,942) within thirty (30) days of the entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, MO 63197-9000.

2. The Respondent shall reference the Docket Number CWA-07-2014-0002 and **In the Matter of City Wide Construction Products, Inc.** on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Kristen Nazar
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.


5. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/16/14
Date


Becky Weber
Director
Air and Waste Management Division

9/17/14
Date


Kristen Nazar
Assistant Regional Counsel

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RESPONDENT:
City Wide Construction Products, Inc.

7/23/14
Date



Printed Name AARON HARLESS

Title GENERAL MANAGER

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borrromeo

Karina Borrromeo
Regional Judicial Officer

Date 9-18-14

IN THE MATTER OF City Wide Construction Products, Inc., Respondent
Docket No. CWA-07-2014-0002

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to:

Aaron Harless, General Manager
City Wide Construction Products, Inc.
1817 N. Farmers Branch Road
Ozark, Missouri 65721

Dated: 9/22/14



Kathy Robinson
Hearing Clerk, Region 7