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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2014-0092
<b>Shine Bros. Corp.</b>	)	
	)	FINDINGS OF VIOLATION AND
Respondent	)	ORDER FOR COMPLIANCE
	)	ON CONSENT
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	
_____	)	

**Preliminary Statement**

1. This Administrative Order for Compliance on Consent ("Order on Consent") is issued by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), as amended. 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, Shine Bros. Corp. ("Respondent" or "Shine Bros."), is and was at all relevant times a corporation under the laws of and authorized to conduct business in the State of Iowa.

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 alleged 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 amicably reached agreement regarding the timeframes for the 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 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.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order on Consent.

### **Statutory and Regulatory Framework**

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

8. 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.

### **Stormwater**

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 conform 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, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified as Standard Industrial Classification 5093 (Scrap and Waste Materials).

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. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. IDNR issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity. The most recent 5-year permit has an effective date

of October 1, 2012, and an expiration date of October 1, 2017, with previous 5-year permits having been issued in 1997, 2002 and 2007. The relevant provisions of each permit, as reissued, are substantially the same.

15. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent (“NOI”) to IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site before the NOI is submitted to IDNR and fully implemented concurrently with operations at the facility.

### **EPA’s General Allegations**

16. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Shine Bros. Corp., located at 528 East Park St., Spencer, Iowa 51301 (“Facility”), operating under SIC code 5093.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge to the Little Sioux River, including a portion of which that flows into Pete’s Pond or the City of Spencer, Iowa’s storm sewer system and thereafter to the Little Sioux River. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

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

20. The Little Sioux River and Pete’s Pond are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. Stormwater runoff from Respondent’s industrial activity 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).

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

23. After receipt of a NOI from Respondent, dated June 24, 1998, IDNR extended coverage under NPDES General Permit No. 1, Permit Authorization No. IA-3688-3521 (hereafter “Permit”), to Shine Bros. Corp, for the Facility, through October 1, 2002. Upon payment of renewal fees and submission of applications for renewal, IDNR extended the Permit

to Respondent during permit cycles from October 1, 2002, through October 1, 2007; from October 1, 2007, through October 1, 2012; and from October 1, 2012, through October 1, 2017. The Permit governs stormwater discharges at the Facility associated with industrial activity.

24. Respondent has operated under the Permit at all times relevant to this Complaint.

25. On January 26, 2006, the IDNR performed a compliance investigation of the Facility (“IDNR 2006 Investigation”), following a citizen’s complaint that pollutants originating from the Facility were being discharged into Pete’s Pond and the Little Sioux River. The IDNR 2006 Investigation report noted that stormwater from the north and east side of Respondent’s property discharges through a City owned park to Pete’s Pond, located within the park. The report further stated that the stormwater discharging to the City Park “contains an excessive amount of wire insulation. This insulation appeared to have originated from an insulation stock pile located just inside the Shine Bros. property.” The IDNR report required among other things, the Respondent incorporate new storm water management practices into the SWPPP.

26. On July 11, 2011, the IDNR performed an Air Program Investigation (“IDNR 2011 Air Investigation”) following the receipt of a citizen complaint of fugitive dust and particulates being released from the Facility. IDNR staff observed wire insulation (sometimes referred to as “fluff”) accumulated in the curb and gutter along East Park Street or the Facility’s northern property boundary. IDNR staff noted that a rainfall event had occurred on July 10, 2011, and that it appeared that wire insulation had entered the storm sewer along East Park Street which leads to the Little Sioux River. An analysis of a sample collected during the Investigation found concentrations of metals found in the fluff.

27. On December 16, 2011, the IDNR performed a compliance investigation of the perimeter of the Facility (“IDNR 2011 Investigation”). The purpose of the Investigation was to evaluate the Facility following receipt of an anonymous report of polluted stormwater runoff from Respondent’s Facility. During the Investigation, the IDNR observed discharges from the Facility’s property flowing across the City Park located adjacent to the Facility and into Pete’s Pond. The discharges included chopped or shredded insulation and/or fluff leaving Respondent’s Facility via stormwater and possibly from airborne particulates. IDNR observed the lack of stormwater controls along portions of the perimeter of Respondent’s Facility adjacent to the City Park and areas where Respondent’s stormwater controls were not properly maintained, such as sections of silt fence not properly anchored into the soil. IDNR staff also observed scrap metal and other debris that had fallen from a berm or had been pushed or spilled over a berm from Respondent’s Facility into the Little Sioux River.

28. On April 10, 2012, the EPA performed an inspection of the Facility (“EPA Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the EPA Inspection was to evaluate the Facility’s compliance with the CWA, including its management of stormwater at the Facility.

29. During the EPA Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation (“NOPV”) identifying issues that may be violations of Respondent’s Permit,

including but not limited to, waste material exposed to stormwater and wind on northeast area of the Facility; runoff to the City Park and Pete's Pond from the northeast area of the Facility discharging where it lacks adequate stormwater controls to prevent the discharge of solids and floatables; a need to implement best management practices and structural controls; and a need to update the SWPPP. EPA staff also observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and areas where Respondent's stormwater controls were not properly maintained, such as sections of silt fence not properly anchored into the soil.

30. Included among the documents reviewed during the EPA Inspection and subsequently submitted by the Respondent to the EPA inspector were:

a. Respondent's SWPPP, which was signed, dated and certified in June 1999. Section 8 of the SWPPP indicates that amendments were made in February 2005, January and February 2006, August 2007, October 2008 and December 2011. During or immediately following the EPA Inspection, the Respondent also revised the SWPPP, with an amendment to the SWPPP dated April 10, 2012; and

b. Respondent's Annual Inspection Report forms for inspections conducted pursuant to the SWPPP for an unspecified date in 2009, December 7, 2010, and September 28, 2011.

31. On April 19, 2012, IDNR staff performed a site visit of the perimeter of the Respondent's Facility ("IDNR 2012 Site Visit"). During the April 2012 Site Visit, IDNR staff observed the discharge of stormwater and fluff from the Facility through the City Park and into Pete's Pond. IDNR staff also observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and the lack of proper maintenance of stormwater controls, such as sections of silt fence not properly anchored into the soil.

32. On April 23, 2013, IDNR staff performed a site visit of the perimeter of the Respondent's Facility ("IDNR April 2013 Site Visit"). During the April 2013 Site Visit, the IDNR observed discharges from the Facility through the City Park to Pete's Pond that were turbid, had a sheen and contained pieces of floating wire insulation. IDNR staff observed the discharge of stormwater and pollutants from the Facility. IDNR staff also observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and stormwater controls not properly maintained, such as sections of silt fence not properly anchored into the soil.

33. On November 20, 2013, EPA and IDNR staff performed a site visit of the perimeter of the Respondent's Facility ("Joint EPA/IDNR 2013 Site Visit"). During the Joint EPA/IDNR 2013 Site Visit, the EPA and IDNR observed accumulated chopped wire insulation, fluff and other debris in the City's park in the area immediately outside the fence line of the Facility, including in a swale/flow path and culvert between the Facility and Pete's Pond, along the southeast bank of Pete's Pond, in and around the outlet from Pete's Pond to the City of Spencer storm sewer, in the City of Spencer storm sewer, and on the banks of the Little Sioux River near

the outfall of the City of Spencer storm sewer. IDNR staff also observed actions by staff of the City of Spencer Public Works Department to remove debris causing major blockage of the connection from Pete's Pond to the storm sewer. IDNR staff observed stormwater continuing to trickle through the blockage into the storm sewer from the connection to Pete's Pond. The removed debris included, among other things, fluff, pieces of metal wire, and wire insulation. Analysis of a sample collected by IDNR of the material removed from the blockage in the storm sewer revealed metal concentrations of Antimony, Arsenic, Cadmium, Chromium, Copper, Lead, Molybdenum, Nickel, and Zinc.

### **EPA's Specific Allegations**

#### **Count 1**

#### **Discharges of Non-Stormwater Pollutants**

34. The allegations stated in Paragraphs 1 through 33 above are re-alleged and incorporated herein by reference.

35. Part III.A. of Respondent's Permit states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water."

36. The EPA Inspection, IDNR Investigations, and EPA and IDNR Site Visits referenced above documented discharges of non-stormwater pollutants to waters of the U.S. in violation of Respondent's Permit. The EPA and IDNR documented non-storm water discharges of pollutants from Respondents Facility to Waters of the U.S., including but not limited to:

- a. the discharge of wire insulation "fluff" and other debris into Pete's Pond on April 19, 2012, and April 23, 2013;
- b. evidence of previous discharges of non-stormwater pollutants to Pete's Pond during the investigations and site visits on December 16, 2011, April 10 and 19, 2012, and April 23 and November 20, 2013; and
- c. evidence of discharges from Pete's Pond to the City storm sewer and the Little Sioux River during the Joint EPA/IDNR 2013 Site Visit on November 20, 2013.

37. Each of Respondent's discharges that was not composed entirely of stormwater is a violation of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Count 2**

#### **Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP**

38. The allegations stated in Paragraphs 1 through 37 above are re-alleged and incorporated herein by reference.

39. Part III.C. of Respondent's Permit requires that a storm water pollution prevention plan shall be developed for each facility covered by the Permit, and that the SWPPP shall: identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility; and describe and ensure the implementation of practices which will be used to reduce pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

40. Part III.C.2.C. of the Permit requires that, after notification by the IDNR that a SWPPP does not meet one or more of the minimum requirements of Part III of the Permit, the permittee must make any changes to the SWPPP required by the IDNR and submit a written certification that the requested change have been made. Unless otherwise provided by the IDNR, the permittee must make such changes and submit the notice within 30 days of receipt of the notice from IDNR.

41. Part III.C.3. of Respondent's Permit requires that the permittee shall amend the SWPPP whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to Waters of the U.S or if the storm water pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

42. Part III.C.4. of Respondent's Permit requires that a site specific SWPPP be developed for each facility covered by the permit, including but not limited to the following minimum components:

a. Part III.C.4.A. – identify all activities and significant material which may potentially be significant pollutant sources;

b. Part.III.C.4.A.(1) – a site map showing an outline of the drainage area of each storm water outfall, each existing structural control measure to reduce pollutants in storm water runoff, and each surface water body; and

c. Part III.C.4.A.(2) – the location and a description of existing structural and non-structural control measures to reduce pollutants in stormwater runoff.

43. Section 3.1 of Respondent's SWPPP lists significant yard features that are depicted on the Site Map, which is attached as Figure 1 of the SWPPP. Section 3.4 of the SWPPP describes the predicted storm water drainage patterns at the Facility, which are stated to be illustrated in Figure 1.

44. Based on observations and information collected from July 2011 through November 2013 in connection with the EPA Inspection, the IDNR Investigations, and the EPA and IDNR Site Visits described above, Respondent failed to prepare an adequate SWPPP and/or amend the SWPPP after there was a change in design, construction, operation or maintenance at the Facility

that had an impact on the potential to discharge pollutants or when controls were determined to be ineffective, as follows:

a. Section 3.1 of the SWPPP and the Site Map attached thereto as Figure 1 failed to identify all outfalls, their drainage areas, and each existing structural control measure serving the Facility, including but not limited to the overflow outfall to the Little Sioux River from the storm water retention basins on the west side of the property, and all outfall points along the fence line separating Respondent's Facility from the City's park, located north of the East Chop Building, that leave the property and discharge to Pete's Pond;

b. Section 3.1 of the SWPPP and the Site Map attached thereto as Figure 1 failed to identify all outfalls from the Facility that discharge to the City's storm sewer from curb inlets on East Park Street; and

c. discharge of shredded wire insulation and other debris from Respondent's Facility to the City Park and Pete's Pond continued despite specific prior notice by IDNR of the Respondent's SWPPP deficiencies, and regardless of amendments made by Respondent noted in Section 8 of the SWPPP, including but not limited amendments in December 2011 and April 2012.

45. Respondent's failure from at least April 2011 through November 2013 to develop an adequate SWPPP, failure to properly amend the SWPPP to accurately reflect changes to the Facility, and failure to amend the SWPPP when stormwater controls were ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity are violations of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3  
Failure to Implement SWPPP**

46. The allegations stated in Paragraphs 1 through 45 above are re-alleged and incorporated herein by reference.

47. Parts III. C.4.B. of Respondent's Permit require each facility covered by the Permit to develop a description of storm water management controls appropriate to the facility and implement such controls, including but not limited to the following minimum components:

a. Part III.C.4.B.(3) – Preventative Maintenance, which requires a program that involves inspection and maintenance of storm water management devices as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters;

b. Part III.C.4.B.(4) – Good Housekeeping, which requires the maintenance of a clean, orderly facility;

c. Part III.C.4.B.(6) – Storm Water Management, which requires that the plan contain a narrative consideration of the appropriateness of traditional storm water management practices, and based on an assessment of the potential of various sources at the plant to contribute pollutants to stormwater discharges associated with industrial activity, the plan shall require that measures determined to be reasonable and appropriate are implemented and maintained; and

d. Part III.C.4.B.(8) – Employee Training, which requires that employee training programs inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan; address topics such as spill response, good housekeeping and material management practices; and identify periodic dates for such training.

48. Section 4.0 of Respondent's SWPPP provides Best Management Practices to be implemented by the Facility to reduce the potential of pollutants entering storm water discharges, including but not limited to: Section 4.1, which addresses preventative management controls and traditional stormwater management controls to reduce the potential of pollutants to enter stormwater discharges; Section 4.2, which addresses good housekeeping practices and preventative maintenance procedures to be performed to reduce the potential of contaminants entering stormwater from various activities conducted at the Facility; and Section 4.4, which addresses sediment and erosion controls to prevent excessive sediment and particulate matter from entering stormwater flow, requires silt fencing to be examined weekly and after precipitation events.

49. Section 5.0 of Respondent's SWPPP provides a list of the categories of employees that will be trained, the timing of training (during initial job training and periodic meetings, as needed), and the topics for the employee training.

50. Based on observations and information collected from April 2011 through November 2013 in connection with the EPA Inspection, the IDNR Investigations, and the EPA and IDNR Site Visits described above, Respondent failed to fully implement the storm water management controls in its SWPPP, and controls that were implemented were ineffective at preventing the discharge of pollutants from the Facility into Waters of the U.S., including the following:

a. areas throughout the Facility where preventative maintenance of stormwater controls was not regularly occurring, including inadequate and/or missing stormwater controls and stormwater controls in disrepair allowing pollutants such as fluff, wire insulation, and other debris from the Facility to enter the City Park and Pete's Pond;

b. areas throughout the Facility where good housekeeping practices were not regularly being implemented, including shredded insulation debris from the chopping areas being carried off-site through stormwater and/or wind deposition, ferrous metal and

other material storage along the Little Sioux River without adequate controls to ensure the material was not pushed, spilled, or allowed to fall into the river; and

c. training for Respondent's employees in 2009, 2010 and 2011 addressed spill prevention, clean-up procedures, fire extinguisher and fire prevention, and drum handling, but did not include training on the components and goals of the storm water pollution prevention plan or addresses good housekeeping and material management practices.

51. Respondent's failure from at least April 2011 through November 2013 to develop and implement storm water management controls in the SWPPP to prevent discharges of non-storm water pollutants to Waters of the U.S., including good housekeeping practices, preventative maintenance procedures, best management practices, and employee training, is a violation of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Count 4**

#### **Inadequate Visual Inspections and Failure to Address Findings of Inspections**

52. The allegations stated in Paragraphs 1 through 51 above are re-alleged and incorporated herein by reference.

53. Part III.C.4.C. of Respondent's Permit requires that qualified personnel inspect designated equipment and the plant area no less than once per year. The Visual Inspection requirements identified in Part II.C.4.C., which must be included in the SWPPP pursuant to Part III.C.4. of the Permit, includes, among other things:

a. Part III.C.4.C.(1) a requirement that material handling areas and other potential sources of pollution identified in the SWPPP in accordance with Part III.C.4.A. of the Permit be inspected for evidence of, or the potential for, pollutants entering the drainage system;

b. Part III.C.4.C.(2) a requirement to, based on the results of the inspection, revise the description of potential pollutant sources and pollution prevention measures, as appropriate, and to implement the revisions; and

c. Part III.C.4.C.(3) specific requirements for preparing the report summarizing the scope of the inspection, including the personnel making the inspection, the date(s) of the inspection, major observations relating to implementation of the SWPPP, and actions taken to revise the SWPPP in accordance with Part III.C.4.C.(2).

54. Section 6.0 of the SWPPP developed by Respondent to implement the requirements of its Permit provides instructions and guidance for conducting annual site inspections and preparing the annual inspection report. Instructions in Section 6.0 include, but are not limited to:

performing a review that includes a complete site inspection to verify that the site map and potential storm water pollution sources associated with significant materials and facility activities are described accurately in the SWPPP; evaluating structural and non-structural control measures to determine if they accurately address potential pollutant sources and are effective in minimizing the potential for storm water pollution; and visually inspecting equipment needed to implement the SWPPP. The Annual Inspection Report form is attached to the SWPPP at Appendix 5.

55. Section 6.1 of Respondent's SWPPP provides guidance for conducting the annual site inspection, including but not limited to: inspection of storm water drainage areas, retention ponds, and outfalls for evidence of pollutants entering the drainage system; inspection of structural controls to ensure proper operation; determining if practices or controls are in place for each area identified for Good Housekeeping Practices and Preventative Maintenance Procedures in Section 4.2 of the SWPPP and whether those practices and controls are adequate in controlling source pollution at each area; evaluation of whether traditional and structural controls described in the SWPPP are sufficient to minimize storm water pollution; determining if additional controls are necessary; and determining if any changes in the training program are needed.

56. Section 6.2 of Respondent's SWPPP indicates that Page 2 of the Annual Inspection Report should be completed to identify sections in the SWPPP that require revisions, and requires that revisions to the plan must be made within two weeks of the inspection and that implementation of revisions must be made within twelve weeks of the inspection.

57. Based on observations and information collected from April 2011 through November 2013 in connection with the EPA Inspection, the IDNR Investigations, and the EPA and IDNR Site Visits described above, Respondent failed to comply with the annual report requirements of its Permit and implement the annual inspection requirements of its SWPPP. The reports for the inspections were limited to identification of physical structures on the Facility premises and included no observations regarding the adequacy of pollution prevention controls, including the following:

a. failed to provide the specific date of the inspection for completion of the annual inspection report for reporting year 2009;

b. failed to document the observation of all Facility outfalls (e.g., drainage area to Pete's Pond) in annual inspection reports for reporting years 2010 and 2011; and

c. failed to indicate in the annual inspection reports for reporting years 2009 through 2011 that any observation had been made for: evidence of, or the potential for, pollutants entering the drainage system; whether the structural controls were in proper operation, or whether traditional and structural controls described in the SWPPP were sufficient to minimize storm water pollution; determining whether practices or controls are in place for each area identified for Good Housekeeping Practices and Preventative Maintenance Procedures in Section 4.2 of the SWPPP and whether those practices and controls are adequate in controlling source pollution at each area; evaluation of whether

traditional and structural controls described in the SWPPP were sufficient to minimize storm water pollution; determination if additional controls are necessary; and determination if any changes in the training program were needed.

58. From at least July 2011 through November 2013, the EPA and IDNR documented evidence of persistent and continuing discharges of pollutants in stormwater from Respondent's Facility to Pete's Pond and/or the lack of implementation of effective good housekeeping and pollution prevention practices at the Facility.

59. Respondent's failures from at least April 2011 through November 2013 to conduct effective annual visual inspections, prepare reports documenting its observations, revise the description of potential pollutant sources and pollution prevention measures in its SWPPP following inspections of its Facility, and implement revisions of the pollution prevention measures to address deficiencies are violations of the terms and conditions of the Respondent's Permit, and as such, are violations of Section 301(a), 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Reasonable Time to Achieve Compliance**

60. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that six (6) months is a reasonable time for Respondent to comply with the terms and conditions of its NPDES Permit, IA-3688-3521.

#### **Order for Compliance**

61. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS, and Respondent hereby CONSENTS, to take the actions described below.

62. Immediately upon the receipt of this Order, the Respondent shall commence actions 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 NPDES permit, including, but not limited to:

a. full implementation of the current revised SWPPP with interim measures, including, but not limited to, good housekeeping practices, use of improved storage areas, maintenance of existing structural stormwater controls, maintenance of new structural stormwater controls as they are constructed and commissioned into service, employee training, and site inspections as required by the Permit and SWPPP;

b. new structural controls, including, but not limited to, (i) construction of a series of stormwater retention ponds with interconnected piping to divert stormwater away from the eastern side of Facility adjacent to the City park to a retention basin on the western side of Facility engineered to comply with the permit and applicable legal

requirements, and (ii) construction of enclosures (foundation, walls, doors, and roof) intended to contain certain wire and materials handling, moving, processing and storage areas and relocate them away from the eastern Facility property boundaries, as set forth in Appendix A;

c. preparation and implementation of a revised SWPPP to reflect new structural and non-structural stormwater controls within 30-day of completion of facilities improvements set forth in subparagraph b, above; and

d. construction of a berm/wall between Shine Bros. Facility and the City Park to divert stormwater runoff from the Facility away from the City park and Pete's Pond.

63. Respondent shall complete the measure to achieve compliance with its NPDES permit described in Paragraph 62, subparagraphs a and b, above, by December 31, 2014. Respondent shall complete the construction of the berm/wall described in Paragraph 62.d, above, by June 30, 2015. If, despite Respondent's best and timely efforts, Respondent believes it will not be able to complete any portion of the structural controls described in Paragraph 62, above, by their respective completion dates, Respondent may submit to EPA a written request for an extension of time to implement that portion of the structural control(s). Such an extension request must be submitted by no later than November 1, 2014, for measures described in Paragraph 62, subparagraphs a and b, and by no later than May 1, 2015, for measures described in Paragraph 62.d. Respondent's request(s) for an extension pursuant to this Paragraph is subject to the following limitations:

a. Respondent must describe the specific structural control(s) for which an extension is requested and the new compliance date being requested, which shall be as soon as practicable taking into consideration such factors as the effects of weather on outdoors construction; and

b. The request must include a demonstration that the additional time needed is due to acts of God, delays in receiving necessary governmental permits despite Respondent's timely permit application, or other similar events beyond the control of Shine Bros. If Respondent's request for an extension is based on a claim of work stoppages or breach of contract by outside contractors, Respondent must further demonstrate that despite its best efforts, Respondent was unable to use reasonably similar alternative sources to complete the work by the deadline.

64. Any decision by EPA regarding a request for an extension of time pursuant to Paragraph 63, above, will be made in writing, and if granted, will set forth the new compliance date for the structural control(s) in question. The decision by EPA regarding the extension shall not be subject to appeal; however, EPA will not unreasonably withhold approval.

65. Respondent shall, within fifteen (15) days of each date for compliance set forth in Paragraph 63, above, or within fifteen (15) days of a later compliance date, if granted by EPA pursuant to Paragraph 64, above, submit to EPA, with a copy to IDNR, a statement certifying

that all of the new structural controls described in Paragraph 62, as applicable to that date, have been completed and are operational.

66. In addition to, and following completion of, the new structural controls and other measures described in Paragraph 62, above, Respondent commits to review its mitigation efforts in the City park adjacent to its Facility in the Spring of 2015. Respondent commits to ensure establishment of grass cover in the mitigated area of the park, to the extent possible in shaded areas, and to clean-up any additional fluff (process wire insulation and associated wire) from new topsoil areas.

67. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

### Submissions

68. *Reporting to EPA and IDNR:* In addition to the certification required by Paragraph 65, above, Respondent shall submit to EPA, with a copy to IDNR, semi-annual reports describing the actions it has taken to comply with the terms of this Order. These reports are due January 15 and July 15, 2015, and January 15 and July 15, 2016. Each report shall include, at a minimum:

- a. a description of implementation and/or revision of the SWPPP during the previous six month period;
- b. a description of work and other actions taken to construct the structural controls and/or implement mitigation efforts described in Paragraph 62, subparagraphs b and d, and Paragraph 66, above, in the previous six month period; and
- c. copies of all relevant documentation regarding the activities described pursuant to subparagraphs a and b.

69. All submissions by to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*I certify that Shine Bros. Corp. has complied with all the applicable requirements of the Order for Compliance. I also 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.*

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

Lantz Tipton, or his successor  
Compliance Officer (WENF)  
Water Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

71. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Ken Hessenius, Supervisor  
IDNR Field Office #3  
1900 North Grand Ave, Suite E17  
Spencer, IA 51301

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order**

72. Compliance with the terms of this Order shall not relieve the 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.

73. 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 Sections 309(b), (c), (d) or (g) of the CWA, 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 CWA for any violation whatsoever.

#### **Access and Requests for Information**

74. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect the Respondent's facility, and/or to request additional information from the Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

**Severability**

75. If any provision or authority of this Order, or the application of this Order to the Respondent, is held by federal judicial authority to be invalid, the application to the 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**

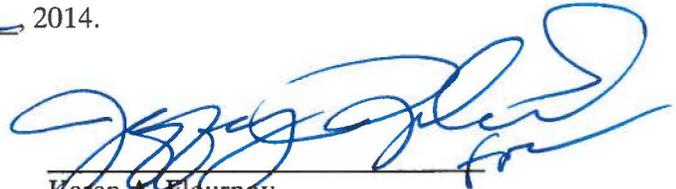
76. This Order shall be effective upon receipt by the Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

**Termination**

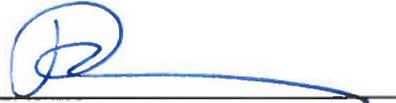
77. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

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

Issued this 30 day of SEPTEMBER, 2014.



Karen A. Flourney  
Director  
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel

**For the Respondent, Shine Bros. Corp.:**

  
\_\_\_\_\_  
Signature

9/26/14  
\_\_\_\_\_  
Date

Toby B. Shine  
\_\_\_\_\_  
Name

Pres  
\_\_\_\_\_  
Title

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 Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

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

Toby Shine, Registered Agent  
Shine Bros. Corp  
225 10<sup>th</sup> Avenue, S.E..  
Spencer, Iowa 51301

and by first class mail to:

Ted Peterson, Supervisor  
IDNR Field Office #5  
502 East 9th Street  
Des Moines, IA 50319

Ken Hessenius, Supervisor  
IDNR Field Office #3  
1900 North Grand Ave, Suite E17  
Spencer, IA 51301

<sup>vr</sup>  
10/1/14  
Date

Kathy Robinson  
Signature

**APPENDIX A**  
Shine Bros. Corp. Enclosures  
*Paragraph 62.b.(ii)*

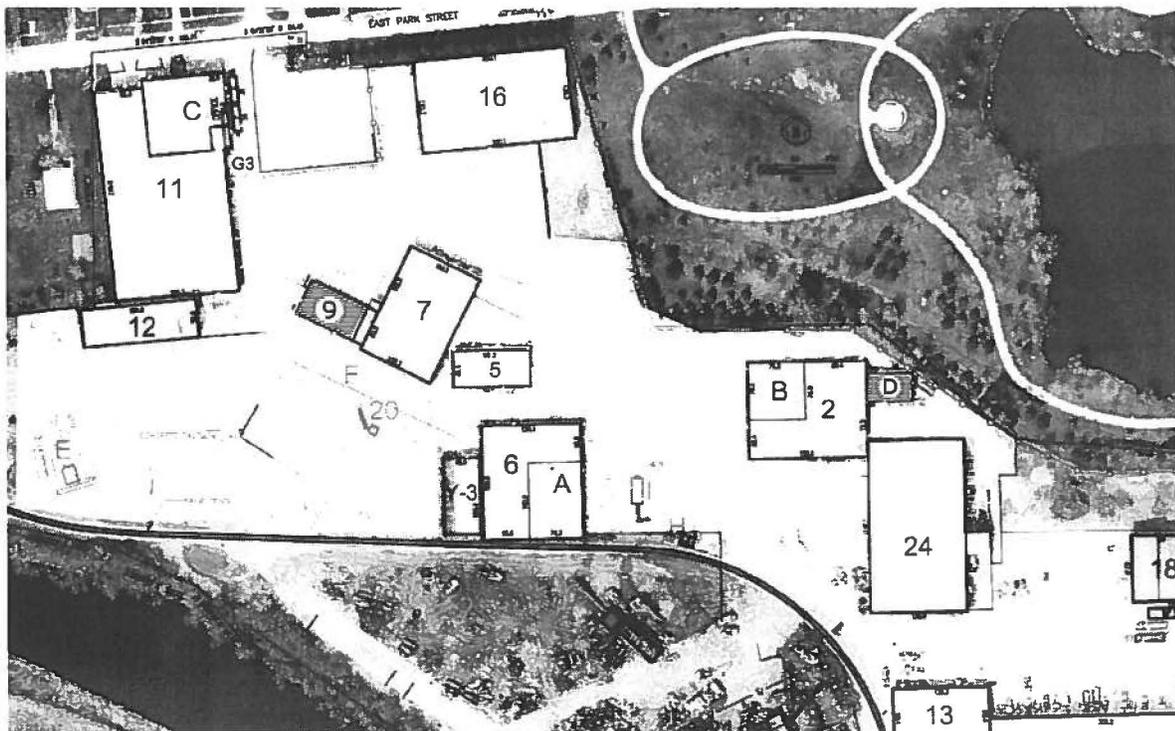
Building D New Building 25: Original Building D will be torn down or repurposed for a use that does not involve exposure of wire chop material to stormwater discharge. Original Building D functions will be transferred to a new building to be designated as Building 25. This existing use will involve more fully enclosing insulation handling of the process known as the “East Chop.” Dimensions: 100’ x 120’. Single slope. 40’ on high side, 35’ 10” on low side. ½:12 pitch.

New Building 20: New Building 20 will involve enclosing the process known as the “West MTB.” There is no current building enclosing this process. Dimensions: 100’ x 120’. Gable roof. 40’ side walls. 1:12 pitch.

Building 9 to be demolished and replaced with a new building 9. This new building will better enclose insulation handling at the process known as “West Chop.” Dimensions: 80’ x 100’. Gable roof. 35’ side walls. 1:12 pitch.

All buildings to be completed by December 31, 2014.

Pre-Construction Layout showing building 9 to be demolished and building D to be repurposed or torn down.



Post- Construction Layout showing buildings "9, 20, and 25.

