

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

** FILED **
19 JUN 2018 - 12:33 PM
U.S. EPA - Region 09

IN THE MATTER OF:)	U.S. EPA Docket No. CWA-09-2018-0007
)	
Modern Concepts, Inc.)	
Compton, California)	COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER
)	
Respondent.)	<i>Class I Administrative Penalty Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
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CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class I civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and (2)(A), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311 (a). The Administrator has delegated this authority to the Regional Administrator of EPA Region IX, who in turn has delegated this authority to the Assistant Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Modern Concepts, Inc.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(xi) defines stormwater discharges associated with industrial activity to include plastic product manufacturing classified under SIC Major Group 30.
8. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
9. The State of California has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015 (hereinafter, “General Permit”).
10. Pursuant to CWA Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19.4, EPA may assess a Class I civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$37,500 in total, against a person for CWA Section § 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, EPA may assess a penalty up to \$20,965 per day of violation, not to exceed \$52,414 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

11. Respondent is a California corporation and therefore, a person within the meaning of CWA § Section 502(5), 33 U.S.C. § 1362(5). Respondent operates Modern Concepts, Inc. located at 3121 East Ana Street in Compton, Los Angeles County, California, hereinafter “Facility.”
12. Respondent has been engaged in compounding plastic resins at the Facility since at least August 2003, a date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 3087 (Custom Compounding of Purchased Plastic

Resins), and are therefore “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(xi).

13. Stormwater runoff from the Facility discharges to an on-site storm drain inlet located on the southeast corner of the Facility on East Ana Street, which is connected to the County of Los Angeles’ municipal separate storm sewer system (MS4). Such inlets, pipes, and the County of Los Angeles’ MS4 are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
14. Stormwater runoff from the Facility is a “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(xi).
15. Stormwater discharges from the Facility include plastic pellets, oil, used oil, pigments, water treatment products, and titanium oxide, and therefore contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
16. Discharges from the Facility enter the County of Los Angeles MS4 and discharge into Compton Creek, a tributary to the Los Angeles River, which flows to the Pacific Ocean. These are “waters of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).
17. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
18. On February 24, 2016, a representative of EPA performed an inspection of the Facility to evaluate the Respondent’s compliance with the General Permit. The EPA inspector observed uncovered metal materials exposed to precipitation and a lack of best management practices (BMPs) for plastic pellets, including no pollution prevention equipment onsite, the lack of durable permanent structures to store plastic pellets, and multiple leaking super sacks and loose plastic resin pellets in the silo storage area, parking lot, and around the dumpster. The EPA Inspector also reviewed the Stormwater Pollution Prevention Plan (SWPPP) and found it lacked the Special Requirements for handling Plastic Materials that became effective on July 1, 2015, as well as a Contingency and Emergency Preparedness Plan, Monitoring Implementation Program, and Facility site map. The EPA’s inspection report was provided to Respondent on June 23, 2016. On November 28, 2016, EPA sent Respondent an Information Request pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. EPA received Respondent’s response on January 10, 2017, informing EPA it had addressed the violations noted in the inspection report.
19. On December 30, 2003, the State Water Board granted Respondent coverage under the General Permit and assigned WDID Number 4 19I018552 for the Facility. Respondent submitted an updated SWPPP on January 6, 2017. EPA provided minor feedback on the SWPPP and Respondent submitted a revised SWPPP addressing EPA’s comments on February 8, 2017. On April 5, 2017, EPA conducted an announced follow-up inspection at the Facility and, observed that Respondent still failed to store plastic pellets outside in

durable, permanent structures that prevent exposure to weather that could cause the material to migrate or discharge in stormwater as required by Part XVIII.A.2.b.v of the General Permit. EPA and Respondent entered into an Administrative Order on Consent, effective July 21, 2017, to address this outstanding compliance matter. Respondent complied with the terms of the AOC on or around August 27, 2017.

20. Between July 1, 2015, the effective date of the General Permit and August 27, 2017, at least sixteen (16) days with rainfall in excess of 0.5 inches were recorded at the National Oceanic Atmospheric Association, National Climatic Data Center using the Long Beach Airport Station. Upon information and belief, each of these ten (16) rainfall events resulted in a discharge of stormwater from the Facility

IV. ALLEGED VIOLATIONS

21. Between July 1, 2015 and August 27, 2017, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a) on at least sixteen (16) days by discharging pollutants from a point source into waters of the United States while in violation of an NPDES permit.

V. ADMINISTRATIVE PENALTY

22. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of \$12,000 within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.
23. Respondent shall make penalty payment by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727
Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

24. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
25. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Sara Goldsmith
Office of Regional Counsel, ORC-3
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

26. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
27. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

28. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

29. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
 - b. neither admits nor denies specific factual allegations contained in the complaint;
 - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
 - d. waives any right to contest the allegations set forth in this CA/FO; and
 - e. waives its right to appeal the Final Order.

VIII. RESERVATION OF RIGHTS

30. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
31. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

32. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

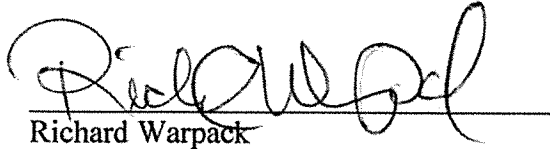
33. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

34. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.
35. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of California regarding this penalty action.

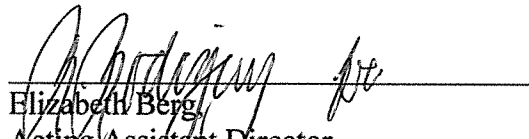
IT IS SO AGREED.

For Respondent, Modern Concepts, Inc.


Richard Warpack
President

4-19-2018
Date

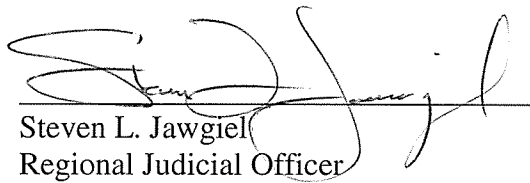
For Complainant the U.S. Environmental Protection Agency, Region IX


Elizabeth Berg
Acting Assistant Director
Enforcement Division

4/30/18
Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order In the Matter of Modern Concepts, Inc., U.S. EPA Docket No. CWA-09-2018-0007, be entered and that Respondent shall pay a civil penalty in the amount of \$12,000 in accordance with the terms of this Consent Agreement and Final Order.


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

Date: 06/18/18

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order was sent to Respondent by U.S. Certified Mail, Return Receipt Requested this 19th day of June, 2018 to:

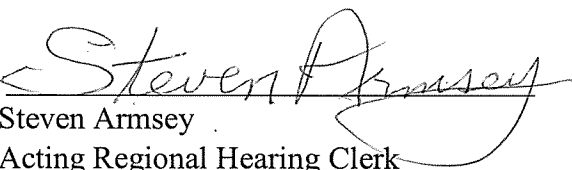
Mr. Richard Warpack, President
Modern Concepts, Inc.
3121 East Ana Street
Compton, CA 90221

Certified Mail Number: 7018 0360 0000 6461 2314

I hereby certify a copy of the Consent Agreement and Final Order was delivered to the following Agency attorney:

Ms. Sara Goldsmith
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St., ORC-1
San Francisco, CA 94105

June 19, 2018
Date


Steven Armsey
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105