

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. CWA-07-2020-0119
	)	
Acme Scrap, Inc.	)	FINDINGS OF VIOLATION
	)	AND ORDER FOR COMPLIANCE
Respondent.	)	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 and Administrative Order for Compliance on Consent (“Order”) are made and issued pursuant to 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 U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division.

2. Respondent is Acme Scrap, Inc., a corporation under the laws of the state of Kansas, and the owner and/or operator of a facility located at 700, 701, and 711 Frey Street in Great Bend, Kansas.

3. The EPA, together with 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 with its National Pollutant Discharge Elimination System (“NPDES”) permit for discharges of industrial stormwater. As set forth in this Order on Consent, the Parties have amicably 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) consents to personal service by electronic mail; (3) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (4) 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 by any person, 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 an NPDES permit issued pursuant to that Section.

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 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.

9. 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.

10. 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.

11. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity,” 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 material storage areas at an industrial plant,” and includes “storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.” Further, 40 C.F.R. § 122.26(b)(14) defines “material handling activities” to “include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.”

12. Included in the categories of facilities considered to be engaging in “industrial activity,” pursuant to 40 C.F.R. § 122.26(b)(14)(vi), are facilities “involved in the recycling of

materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

13. The Kansas Department of Health and Environment (“KDHE”) is the state agency within the state of Kansas that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

14. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

### **EPA’s General Allegations**

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

16. At all times relevant for this action, Respondent was the owner and/or operator of a facility that processes ferrous and non-ferrous metals from industrial and residential sources for recycling purposes operating under SIC code 5093 and consisting of a main process yard located at 700 Frey Street and a vehicle and equipment maintenance yard located at 701 and 711 Frey Street in Great Bend, Kansas, together comprising approximately 6.44 acres (collectively, the “facility” or “site”).

17. The facility is located approximately 0.3 miles north of the Arkansas River. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s facility and flow adjacent to railroad tracks and along surface streets and into the open channel municipal separate storm sewer system (“MS4”), and then into Walnut Creek, a tributary to the Arkansas River.

18. Walnut Creek is impaired by fecal coliform, selenium, total phosphorous, sulfates, and has impaired biota, but does not yet have any established total maximum daily loads.

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

20. The facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), including discharges from the main process yard and the vehicle and equipment maintenance yard.

21. Stormwater discharges associated with industrial activity are “point sources” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Walnut Creek and the Arkansas River are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

23. Stormwater runoff from industrial activity at Respondent's above referenced facility 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).

24. Respondent's discharge of pollutants, including discharges of stormwater 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 the CWA, 33 U.S.C. § 1342.

25. On November 25, 2013, KDHE granted authorization to the facility, based on the facility's September 26, 2013 Notice of Intent ("NOI"), under the Kansas General Permit for discharges of stormwater runoff from industrial activity, subject to compliance with conditions and limitations set forth in the permit, with permit number KSR000887 (hereinafter "Respondent's NPDES Permit"). The current Kansas General Permit became effective on November 1, 2016, with an expiration on October 31, 2021. The facility submitted the annual renewal form and fee to KDHE for continued coverage under the current permit on October 25, 2019.

26. On October 24 and 25, 2019, the EPA performed an Industrial Stormwater Inspection ("Inspection") of Respondent's site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its Permit and the CWA.

27. During the Inspection, the EPA inspector reviewed Respondent's records and obtained copies of Respondent's documents related to the NPDES Permit, including, but not limited to, the facility's stormwater pollution prevention plan ("SWPPP"), inspection records, and training records. The EPA inspector also toured the facility, observed discharge locations, and photographed various stormwater-related areas.

28. A Notice of Potential Violation ("NOPV") was issued by the EPA inspector at the conclusion of the Inspection.

29. A copy of the Inspection report was sent to Respondent by the EPA by letter dated December 12, 2019.

### **EPA's Findings of Violation**

#### **Count 1**

#### **Failure to Update NOI and to Maintain an Updated and Accurate SWPPP**

30. The facts stated above are re-alleged and incorporated herein by reference.

31. Sections 1.5 and 1.7 of Respondent's NPDES Permit require that facilities submit an updated NOI to obtain coverage under the permit when information in the current NOI is inaccurate or needs to be updated.

32. Section 2.1 of Respondent's NPDES Permit requires that the permittee develop a SWPPP specific to the industrial activity and site characteristics occurring at the permitted

location described in the NOI, and periodically review and update, as necessary, the provisions of their SWPPP.

33. Section 2.4.2 of Respondent's NPDES Permit requires the SWPPP to contain, at a minimum, a site map identifying, among other things, drainage areas, direction of flow, and acreage of each stormwater outfall, the location of significant materials exposed to precipitation or runoff, vehicle and equipment maintenance and storage areas, storage tanks, short- and long-term material storage areas, and areas where spills have occurred and residues remain.

34. During the EPA inspection, the inspector noted that the following was not defined or updated in the facility's NOI and/or SWPPP:

- a. The NOI and SWPPP inaccurately identify the total size of the site, identifying only 2.7 acres in Section 3.1 of the SWPPP, whereas the actual size of the site is 6.7 acres;
- b. Section 3.1 of the SWPPP identifies two outfalls with a drainage area of 0.7, collectively, and states that 2.0 acres of the site have no discharge, but does not identify outfalls for the other 4.0 acres of the site;
- c. Section 3.4 of the SWPPP states that the site has not experienced any significant spills but lists only years 2006-2010, whereas the EPA inspector observed and documented evidence of multiple areas on the site where spills have occurred and residues remain;
- d. Table 4.1 of the SWPPP has not been updated since 2010 to provide documentation of the facility's implementation of the proposed best management practices; and
- e. The SWPPP was developed in 2010 but not signed and certified until 2018.

35. Respondent's alleged failure to submit an updated NOI and to maintain an updated and accurate SWPPP is a violation of the conditions or limitations of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of CWA, 33 U.S.C. § 1342(p), and implementing regulations.

## **Count 2**

### **Failure to Implement the SWPPP and Failure to Implement Controls**

36. The facts stated above and re-alleged and incorporated herein by reference.

37. Section 2.1 of Respondent's NPDES Permit requires the Respondent to fully implement the developed SWPPP.

38. Section 2.4.3 of Respondent's NPDES Permit requires that Respondent's SWPPP list and describe stormwater controls and best management practices. Table 4.1 and Sections 4.3, 4.5, and 4.6 of Respondent's SWPPP provide the expectations and procedures for facility good housekeeping measures, best management practices, employee training, inspections of incoming and leaking vehicles, and quarterly inspections.

39. Section 4.1 of Respondent's SWPPP states that Table 4.1 of Respondent's SWPPP summarizes additional best management practices that were planned to further reduce discharges; however, several of the identified best management practices were never documented as implemented in the SWPPP, nor actually implemented based on the EPA inspector's observations, including:

- a. Post signs identifying materials that are not accepted;
- b. Stop accepting vehicles still containing automotive fluids;
- c. Develop and implement more aggressive housekeeping measures in the inbound area, material processing area, outside storage area, and baler;
- d. Process vehicles over concrete;
- e. Store all batteries inside or under cover;
- f. Install spill kits onsite;
- g. Store radiators, cores, and turnings under cover or over concrete;
- h. Clean any oily water with absorbant pads;
- i. Perform crushing operations on a pad with gutters to contain spills;
- j. Perform cutting operations over impervious surface;
- k. Drain all fluids from vehicles prior to crushing;
- l. Store all fluids under cover or over concrete, including but not limited to, used oil, antifreeze, gasoline, and diesel;
- m. Equip fluid storage to contain 110% of any spills; and
- n. Store company vehicles under cover or over impervious surfaces.

40. During the EPA Inspection, the inspector noted failures in the facility's implementation of good housekeeping measures and best management practices described in the SWPPP throughout the site including, but not limited to, soils stained with oils and other contaminants, batteries stored outside without cover, leaking equipment, and failures to conduct visual inspections on incoming vehicles, quarterly site inspections, and SWPPP training with all employees.

41. Section 2.4.3 of Respondent's NPDES permit requires that the SWPPP list and describe erosion and runoff controls and a schedule for maintenance of controls like oil/water separators. Sections 4.9 and 4.10 of Respondent's SWPPP require that Respondent provide vegetation around the perimeter of the site to aid in erosion control and that the site has structural runoff management controls in the form of berms and catch basins, and an oil/water separator.

42. During the EPA Inspection, the inspector observed and documented that the structural controls described in Sections 4.9 and 4.10 of Respondent's SWPPP were missing from the site and the oil/water separator was not being maintained.

43. Respondent's alleged failure to implement the SWPPP and controls, including good housekeeping activities, is a violation of the conditions or limitations of Respondent's NPDES permit, and as such, is a violation of Section 402(p) of CWA, 33 U.S.C. § 1342(p), and implementing regulations.

**Count 3**  
**Failure to Perform Annual Comprehensive Site Compliance Evaluations and Visual Monitoring and/or Maintain Documentation**

44. The facts stated above are re-alleged and incorporated herein by reference.

45. Section 2.4.4 of Respondent's NPDES Permit and Section 6.0 of Respondent's SWPPP require that the permittee conduct a comprehensive site compliance evaluation at least once a year, including a visual inspection of areas contributing to a stormwater discharge, evaluate measures to reduce pollutant loadings to determine whether they are adequate, and keep a report summarizing the evaluation on site.

46. Section 2.4.5 of Respondent's NPDES Permit and Section 6.0 of Respondent's SWPPP require that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

47. Section 3.1 of Respondent's NPDES Permit requires that the permittee maintain all records for a period of three years, including the NOI authorized by the KDHE and documentation requesting authorization and all inspection records.

48. During the EPA inspection, the facility representatives reported that they had not completed an annual comprehensive site compliance evaluation besides one signed in January 2019, or any visual monitoring for the duration of the permit, and did not have any documentation of such evaluations or monitoring. In addition, the most recent permit authorization was not available on site.

49. Respondent's alleged failure to properly conduct annual comprehensive site compliance evaluations and visual monitoring of stormwater discharges associated with the industrial activities at the facility and/or maintain documentation of such evaluations, monitoring, and permit authorization is a violation of the conditions or limitations of the NPDES permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

**Reasonable Time to Achieve Compliance**

50. 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 three (3) months is a reasonable time for Respondent to achieve compliance with the terms and conditions of its Permit.

### **Order for Compliance on Consent**

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

52. In accordance with this Order, the Respondent shall take all necessary actions 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, including, but not limited to:

- a. Revise the facility's NOI and SWPPP to address the entire facility and meet all applicable requirements of the NPDES Permit;
- b. Install appropriate stormwater management controls to prevent the discharge of pollutants and conduct adequate good housekeeping at the facility as required by the NPDES Permit and described in the revised SWPPP; and
- c. Conduct and document annual comprehensive site compliance evaluations and visual monitoring in accordance with the NPDES Permit.

53. By no later than 60 days following the effective date, Respondent shall provide a report to the EPA, with a copy to the KDHE, that includes:

- a. A copy of the updated and revised NOI and SWPPP for the facility, including identification of outfalls and flow direction on site and off site;
- b. Evaluation and documentation of the well located adjacent to the 500-gallon diesel tanks, including the well's installation date, construction details, usage purpose, monthly flow rate or pump flow/electric rating and billing records, and distribution location;
- c. A copy of the results from each visual monitoring event that has been conducted since the October 24-25, 2019, EPA Inspection;
- d. A copy of the report generated from any annual comprehensive site compliance evaluation that has been conducted since the October 24-25, 2019, EPA Inspection; and
- e. A description of all additional actions, structural controls and non-structural controls planned to bring the Facility into full compliance with all conditions and limitations of the Permit.

54. The EPA may, after review of the SWPPP, inspection reports, and description of actions taken submitted by Respondent, provide written comments and suggestions regarding such submittals. Review and comment on the SWPPP or other submissions by the EPA does not relieve Respondent of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

55. 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.

### **Reports/Submissions**

56. *Semi-Annual Reporting.* In addition to the report required by Paragraph 53, above, Respondent shall submit semi-annual reports describing the actions it has taken to ensure continued compliance with the terms of its Permit and this Order. These reports are due to the EPA, with a copy to KDHE, by no later than September 1, 2020, and March 1, 2021. Each report shall include, at a minimum, the following information for the previous six (6) months:

- a. A copy of the report for each visual monitoring event, quarterly site inspection and annual comprehensive site compliance evaluation that has been conducted;
- b. A description of all employee training that has been conducted; and
- c. A detailed description of all actions, structural controls and non-structural controls that have been implemented or that are planned to bring the Facility into full compliance with all conditions and limitations of the Permit, including any updates or amendments to the SWPPP.

57. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 60 below, shall be submitted by electronic mail to:

draper.seth@epa.gov

Seth Draper, or his successor  
U.S. Environmental Protection Agency Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

58. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

59. All documents required to be submitted pursuant to this Order shall also be submitted by electronic mail to KDHE to the address provided below:

TSTILES@kdheks.gov

Thomas C. Stiles  
Director  
Bureau of Water, Kansas Department of Health and Environment  
1000 S. Jackson St. Suite 420  
Topeka, Kansas 66612.

60. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*I 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.*

### **General Provisions**

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

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

62. 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. The 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 the 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**

63. Nothing in this Order shall limit the 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**

64. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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**

65. 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 the EPA.

### **Modification**

66. At the EPA's sole discretion, extensions of the compliance schedules / deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

### **Termination**

67. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

**For the Complainant, U.S. Environmental Protection Agency:**

Issued on the \_\_\_\_ day of \_\_\_\_\_, 2020.

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Shane E. C. McCoin  
Assistant Regional Counsel  
Office of Regional Counsel

**For the Respondent, Acme Scrap, Inc.:**

Corey Crow  
Signature

4-16-2020  
Date

Corey Crow  
Name

Operations Manager  
Title

**Certificate of Service**

I certify that on the date noted below I delivered this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, by electronic mail to haugen.lisa@epa.gov.

I further certify that a true and correct copy of the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy via email to Respondent:

Mr. Corey Crow, Operations Manager, Acme Scrap, Inc., at CCrow@carcrushers.net

Copy via email to representatives for the Complainant:

Shane McCain, EPA Region 7 Office of Regional Counsel at mcoin.shane@epa.gov; and  
Seth Draper, EPA Region 7 Enforcement and Compliance Assurance Division at  
draper.seth@epa.gov

Copy via email to Kansas Department of Health and Environment:

Thomas C. Stiles, Director, Bureau of Water, at TSTILES@kdheks.gov

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature