



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

August 25, 2022 @ 6:25am
USEPA – Region II
Regional Hearing Clerk

August 24, 2022

VIA ELECTRONIC MAIL – jsolewski@bayshorerecycling.com

Jennifer Solewski
Bayshore Recycling Corp.
75 Crows Mill Road
Keasby, New Jersey 08832

Re: **Consent Agreement and Final Order, Docket No. CWA-02-2022-3316**
Bayshore Recycling Corp.
NJPDES Permit No. NJ0132209

Dear Ms. Solewski:

Enclosed is a copy of the signed Consent Agreement and Final Order (“CAFO”).

As agreed to in this CAFO, Bayshore Recycling Corp. must pay the settlement penalty amount (\$25,000.00) on or before ninety (90) calendar days after the date of receipt of this Order to the “Treasurer of the United States of America.” Payments can be made by debit/credit card, check, or electronically, as detailed in Paragraph 19 of the CAFO. You must also send copies of the payment to each of the following:

Douglas McKenna
Branch Chief, Water Compliance Branch
U.S. Environmental Protection Agency, Region 2
McKenna.Douglas@epa.gov

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
maples.karen@epa.gov

Please note that once full payment is made this settles all civil penalties claims against you only for the Clean Water Act violations described in the CAFO. If you have any questions concerning the above, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section at (212) 637-4268.

Sincerely,

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Rai Belonzi, NJDEP (Rai.Belonzi@dep.nj.gov)
Andrew Coleman, NJDEP (Andrew.Coleman@dep.nj.gov)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

August 25, 2022 @ 6:25am
USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

Bayshore Recycling Corp
75 Crows Mill Road
Keasbey, New Jersey

RESPONDENT

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

CWA-02-2022-3316

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency, Region 2 (“EPA”), and Bayshore Recycling Corp (“Bayshore Recycling” or “Respondent”), have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. This is a civil administrative penalty action brought against the Respondent pursuant to Section 309(g) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g), *see also* 33 U.S.C. § 1251 et seq, for violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and their implementing federal regulations.
2. The following Findings of Fact are made, and Final Order issued pursuant to the authority vested in the Administrator of the EPA by Section 309(g) of the Act. This authority has been duly delegated to the undersigned Director of Enforcement and Compliance Assurance Division, Region 2, by the Administrator to the Regional Administrator of Region 2 of EPA.
3. EPA is initiating and concluding this civil administrative penalty action pursuant to Section 309(g) of the CWA, and 40 C.F.R. § 22.13(b)(2) and (3), which set forth procedures for the simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a CAFO.
4. This CAFO resolves violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, as specifically alleged herein.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a person as the term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondent owns/operates an approximately 40-acre recycling facility located at 75 Crows Mill Road in Keasbey, New Jersey (the "Site").
3. Stormwater associated with industrial activities (SIC 5093) is discharged from the Site to eight (8) outfalls designated by New Jersey Department of Environmental Protection ("NJDEP") to Kinsey Creek, a tributary of the Raritan River, and the Raritan River.
4. The Raritan River is a navigable water of the United States as the term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
5. Respondent discharges stormwater associated with industrial activity, which includes "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via the above-mentioned outfalls, to a navigable water of the United States. The outfall pipe is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and as such, discharges pollutants as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. Stormwater discharges from the Site are authorized pursuant to and in accordance with NJPDES Individual Permit No. NJ0132209 (the "Permit"). The most recent Permit was issued on August 22, 2011, and was set to expire on September 30, 2016, but has been administratively extended by the state until the issuance of a new permit.
7. On June 19, 2019, EPA Region 2 conducted a Compliance Evaluation Inspection ("CEI") at the Site.
8. Based on observations at the Site at the time of the CEI and a review of records, EPA identified the following Permit violations:
 - a. Part IV.A.1.a. of the Permit requires that "the permittee shall develop, implement, update, and maintain a Stormwater Pollution Prevention Plan (SPPP), which includes a Drainage Control Plan (DCP)(See Part IV.B.)". Part IV.B.5.d. requires a written narrative of the Drainage Control Plan, including items i.-viii. in this section. At the time of the Inspection, the Respondents had no DCP narrative in the SPPP.
 - b. Part IV.A.1.b. of the Permit requires that "the Permittee shall develop, implement, update, and maintain site specific best management practices (BMPs) to achieve the Permit design criteria and effluent limitations." At the time of the Inspection, the EPA observed that several BMPs were not properly maintained. This included, but was not limited to, sediment socks in catch basins filled beyond design capacity and hay bales being used in improper circumstances.
 - c. Part IV.B.2.b. of the Permit requires that "if monitoring results exceed design criteria (listed in Part IV.B.2.a of the Permit), the permittee shall: evaluate potential sources for the specific parameter that did not comply with the design criteria; identify BMPs by which the permittee can further reduce stormwater contamination; evaluate whether any improvements or changes to the SPPP are warranted to reduce and control this parameter concentration; update the SPPP with any improvements or changes and; summarize the results in the Annual Report in

accordance with Part IV.F, including remedial actions taken". EPA observed that the Site had exceedances of BMP design criteria for COD, TSS, BOD, Aluminum, Copper, Iron, Lead and Zinc from the third Quarter of 2018 through the first Quarter of 2019. No evaluations were identified at the time of the Inspection, and the SPPP was last revised March 2018. No remedial actions were outlined in the Annual Certification Report.

- d. Part IV.B.4.b.i. of the Permit requires that "the Permittee shall design, implement, and maintain BMPs to prevent downstream erosion and sedimentation caused by stormwater and/or wastewater runoff at the outfalls." At the time of the inspection, significant erosion and sedimentation were observed around outfalls SP3A, SP4A, SP5A and SP8A.
- e. Part IV.C.3.a.ii. of the Permit requires that "prior to outdoor storage, all full and in-service roll-off containers and dumpsters shall be completely cleaned of all external debris, residuals, and visible contamination. The roll-off containers and dumpsters shall have no evidence of leakage. In addition, there shall be no evidence of rusting and/or deterioration that may result in potential for TSS (flaking and chipping) or in rusting that imparts color to the surrounding area". At the time of the Inspection, several of the Site's roll-off containers had evidence of leakage. Most of the Site's roll-off containers and dumpsters showed evidence of rust or deterioration.
- f. Part IV.C.3.a.iii. of the Permit requires that "all full and in-services roll-offs shall be completely covered before storm events and at least daily at the end of shift to eliminate all exposure of "source materials" to stormwater". At the time of the inspection, none of the roll-off containers observed had coverings, and there was evidence of exposure to stormwater from rain earlier that day.
- g. Part IV.C.7.a. of the Permit requires that "the permittee shall develop, implement, and maintain BMPs to eliminate exposure of stormwater to "source materials" in the area east of the industrial building and south of the employee parking area within six (6) months of the EDP". At the time of the Inspection, it was observed that stormwater had been exposed to "source materials" in this area of the Site. This Inspection occurred after this six (6) month window had ended.
- h. Part IV.C.11.a. of the Permit requires that "all horizontal and vertical markers required as part of the site Solid Waste requirements for processed and unprocessed stockpiles shall be clearly marked and maintained. The location of the markers shall also be included on the SPPP site map". Part IV.C.11.c.i. requires that "the permittee shall post horizontal markers for all outdoor aggregate storage piles. The horizontal markers shall have a minimum distance of 10 feet from the up-gradient edge of the buffer zones. Horizontal markers used for compliance with solid waste regulations satisfy this condition provided the markers do not extend into buffer zones." At the time of the inspection, EPA did not observe horizontal markers either on the SPPP site map or in use on Site.
- i. Part IV.C.11.c.iii. of the Permit requires that "aggregate shall be stored in a manner that prevents overtopping of retaining walls and/or spillage into buffer zones". At the time of the Inspection, EPA observed an aggregate pile being stored near an area identified as a vegetative swale on the Drainage Control Map. Aggregate from this area had spilled into the Outfall 5 drainage area. Outfall 5 was observed to have significant sediment accumulation in the outfall structure.

- j. Part IV.C.13.b. of the Permit requires that “scrap metal shall only be stored and/or processed in a “no discharge” area or in an area with drainage control. Part IV.C.13.d.i. of this section requires all stormwater from areas of industrial activities at the scrap metal management areas to be directed to Outfall SP8A”. At the time of the inspection, scrap metal was observed being stored outside of the Outfall SP8A drainage area.
 - k. Part IV.C.17.e.iv. of the Permit requires that a “permanent buffer zone, including permanent buffers or sediment barriers, be placed along both sides of Kinsey Creek. A permanent sediment barrier shall be designed to prevent stormwater from running underneath or around the barriers”. At the time of the inspection, three (3) channels were observed in the buffer zone along Kinsey Creek, allowing sediment laden stormwater to flow off-site and into Kinsey Creek.
 - l. Part IV.C.17.g. of the Permit requires that “the permittee shall inspect the buffer zones, buffers, and barriers after each storm event and at least monthly, looking for evidence of breakthrough and/or other failures of the selected BMPs and shall take immediate corrective action upon discovering evidence of breakthrough or other failures. Each inspection shall be recorded on a log and kept on file as part of the site SPPP”. At the time of the Inspection, no buffer zone inspection reports were observed.
 - m. Part IV.D.1.c. requires that “frequent and thorough inspections, at a frequency of at least quarterly, are necessary to ensure adequate functioning of control measures. Inspections are recommended to be conducted during dry periods as well as storm events”. At the time of the Inspection, no quarterly inspections were available for review.
9. On August 27, 2019, EPA issued Administrative Order CWA-02-2019-3043 (the “Order”), which required Respondent to comply with the terms and conditions of the Permit.
 10. On October 7, 2019, Respondent submitted an initial response to the Order. The response described corrective actions that the Site planned to take.
 11. On December 6, 2019, Respondent submitted the first quarterly progress report. These progress reports were required by the Order.
 12. Bayshore Recycling was unable to meet the deadlines set by CWA-02-2019-3043. Consequently, on April 22, 2021, EPA issued a second Administrative Order, CWA-02-2021-3024.
 13. On November 10, 2021, EPA determined that Bayshore Recycling had submitted sufficient information to address the remaining Ordered Provisions.
 14. Based upon the Findings of Fact and Conclusions of Law set forth above in Paragraphs 1-13, EPA hereby finds that Respondent violated the CWA, 33 U.S.C. §§ 1251-1387, and the regulations promulgated pursuant to the CWA, by its failure to comply with the requirements of NJPDES Permit NJ0132209 at the Site.

IV. TERMS OF SETTLEMENT

1. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CAFO.
 - b. Except for the jurisdictional allegations of this CAFO, neither admits nor denies the factual allegations and legal conclusions contained herein;
 - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CAFO; and
 - d. Consents to the payment a civil penalty in the amount of \$25,000, in accordance with the terms described in Section V below.

V. CIVIL PENALTY

1. The Respondent shall pay a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000), to the “Treasurer of the United States of America.”
2. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier’s or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pay.gov/paygov/		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	EIS Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza ST. LOUIS, MO St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati OH 45268 0001		
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004		

	Account Number: 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"
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

The Respondent shall also send copies of this payment to each of the following by email:

Doughlas McKenna, Branch Chief
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2
Email: McKenna.Douglas@epa.gov

and
Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Email: Maples.Karen@epa.gov

The payment must be received at the above address on or before thirty (30) calendar days after the date of receipt of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date").

3. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
4. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31

U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

5. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
6. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or State taxes.

VI. GENERAL PROVISIONS

1. This CAFO shall apply to and be binding upon Respondent, as well as apply to and be binding upon the Respondent's officers, directors, and employees, in their capacities as representatives of Respondent, as well as on the Respondent's successors and assigns, including, but not limited to, Respondent's subsequent purchasers.
2. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, excluding any violations resolved by this CAFO, or for Respondent's violation of any applicable provision of law, excluding any violations resolved by this CAFO, nor waiver of any defense, objection or response the Respondent may assert in response to any claim that the agreement is violated.
3. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
4. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not resolved by this CAFO, and it is the responsibility of Respondent to comply with such laws and regulations.
5. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
6. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.
7. Respondent consents to service upon Respondent by a copy of this CAFO by an EPA employee other than the Regional Hearing Clerk.

FOR: BAYSHORE RECYCLING CORP

Dated: 5/24/22

Signed: 
Valerie Montecalvo, President
Bayshore Recycling Corp

FOR: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: 8/24/2022

Signed: _____
For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

VII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) and having further re-delegated such authority to the Enforcement and Compliance Assurance Division, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 8/24/2022

For _____
Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866