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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Sugar Creek Packing Co.	)	Docket No. CWA-07-2012-0040
1600 West McKay Street	)	
Frontenac, Kansas 66763-8136	)	CONSENT AGREEMENT/
	)	FINAL ORDER
Respondent	)	
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
	)	

The United States Environmental Protection Agency ("EPA"), Region 7 ("Complainant") and Sugar Creek Packing Co. ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order ("CA/FO") serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the

Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

4. Respondent is Sugar Creek Packing Co., a corporation under the laws of Ohio and authorized to conduct business in the State of Kansas. Respondent has a corporate office located in 2101 Kenskill Avenue, Washington Court House, Ohio 43160-9311, and a protein products manufacturing facility located in 1600 West McKay Street Frontenac, Kansas 66763-8136.

Statutory and Regulatory Framework

5. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit.

6. 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 CWA, 33 U.S.C. § 1362.

7. Section 402(p) of 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 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 CWA.

8. 40 C.F.R. § 122.26(b)(14) defines a stormwater discharge that is "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 materials storage areas at an industrial plant." Included in the categories of facilities considers to be engaging in "industrial activity" are facilities under Standard Industrial Classifications 20, which includes establishments primarily engaged in manufacturing prepared meats. *See* 40 C.F.R. § 122.26(b)(14)(xi).

9. Pursuant to Section 402(p) of CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

10. 40 C.F.R. §§ 122.26(a)(1)(ii), 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. The Kansas Department of Health and Environment ("KDHE") is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of CWA. EPA maintains concurrent enforcement authority with authorized states for violations

of CWA.

12. On September 1, 2006, KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity ("General Permit") for the discharge of stormwater under the NPDES. The General Permit governs stormwater discharges associated with industrial activity, addressing categories of facilities generally involved in materials handling, manufacturing, transportation, or production. KDHE reissued the General Permit, which is effective from November 1, 2011, through October 31, 2016. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP").

FACTUAL BACKGROUND

13. Respondent is a "person," as defined by Section 502(5) of CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondent was the owner and operator of a protein products manufacturing facility ("Site"), located at 1600 West McKay Street, Frontenac, Kansas 66763-8136.

15. Respondent uses the Site to manufacture protein products, such as raw bacon strips, fully cooked bacon strips, and bacon bits. The Site comprises 15 acres, and approximately half of the acres have been developed.

16. The Site is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as these terms are defined by Section 502 of CWA, 33 U.S.C. § 1362.

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

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

19. 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 CWA, 33 U.S.C. § 1342.

20. KDHE issued NPDES Permit No. KSR000668, which became effective on November 1, 2011, and expires on October 31, 2016. This NPDES general permit governs Respondent's stormwater discharges that are associated with industrial activity at the Site.

21. On November 14-17, 2011, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a) inspected the Site to determine Respondent's compliance with its NPDES permit and the CWA.

ALLEGED VIOLATIONS

Count 1

Inadequate Stormwater Pollution Prevention Plan

22. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

23. Section 2.4.2 of Respondent's NPDES permit states that a description of potential pollutant sources which may reasonably be expected to add significant pollutants to the stormwater discharge shall be described in Respondent's SWPPP.

24. Section 2.4.2(b) of Respondent's NPDES permit states that the description shall include, at a minimum: a site map as part of Respondent's SWPPP, which includes the following: the outlined drainage areas of each stormwater outfall; storm water conveyance and area inlets for each outfall; all authorized non-stormwater discharge locations; the location of significant materials exposed to precipitation or runoff; storage tanks; scrap general refuse areas; fuel storage and distribution areas; vehicle and equipment maintenance and storage areas; waste storage or disposal areas; short- and long-term materials storage areas; and existing structural control measures to reduce pollutants in stormwater runoff.

25. Section 2.4.2(c) of Respondent's NPDES permit requires Respondent to develop a narrative description of significant materials that are exposed to stormwater. The NPDES permit also requires a narrative description of how those materials are handled, treated, stored, leaked, spilled, disposed of, or otherwise controlled.

26. Section 2.4.3, Measures and Controls, of Respondent's NPDES permit requires Respondent's SWPPP to include a description of stormwater management controls appropriate for the facility that addresses the following minimum components, including a schedule for implementing such controls: good housekeeping, preventive maintenance, and spill prevention and response procedures.

27. The EPA inspection referenced in Paragraph 21 found that Respondent's facility site map does not appear to address the aftermentioned items in Paragraph 24 in their entirety or at all.

28. The EPA inspection referenced in Paragraph 21 found that Respondent's narrative description in the SWPPP was too general. The SWPPP did not provide detailed information about materials, or how these materials are handled or treated. The inspector also observed that

Respondent's narrative description did not include several specific control measures that were used to reduce pollutants in stormwater runoff.

29. The EPA inspection referenced in Paragraph 21 noted several instances where pollutant sources which may reasonably be expected to add significant pollutants to the stormwater discharge were not described in the SWPPP. Specifically:

a. The EPA inspector noted that a non-stormwater discharge was occurring from the rock leach field into the roadway ditch.

b. The EPA inspector observed chemical spillage around the chemical storage area near the northwest section of the facility and significant staining along the down-gradient rock leach field, and pools of what appeared to be oil and grease on the concrete next to the rock leach field. The facility representatives indicated that the pooled liquid was from cleaning the area inside the building, where one of the pretreatment system's DAF units was located.

c. The EPA inspector observed a leak in the concrete of the southeast corner of the production area into a stormwater collection grate just outside the building. A facility representative identified the leak as washwater from the production area; the inspector noted that the washwater appeared to have oil and grease in it.

These potential pollutant sources were not identified in Respondent' SWPPP. In addition, the SWPPP did not include a description of stormwater management controls appropriate for the facility to address good housekeeping, preventive maintenance, or spill prevention and response procedures, for the instances decribed in a subparagraphs a-c.

30. Respondent's alleged failure to develop an adequate SWPPP is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Conduct Employee Training

31. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

32. Section 2.4.3(e) of Respondent's NPDES Permit requires periodic employee training. Specific to Respondent, its SWPPP requires annual employee training.

33. The EPA inspection referenced in Paragraph 21 found that Respondent failed to conduct employee training since the SWPPP was adopted in 2009 until November 2011, following EPA's inspection.

34. Respondent's alleged failure to conduct employee training is a violation of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 3

Failure to Properly Design, Implement or Maintain Best Management Practices

35. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

36. Section 1.2(f) of Respondent's NPDES Permit authorized certain common non-stormwater discharges, provided the facility has stormwater discharges subject to the requirements of this general permit and only if the permittee evaluates and implements, where practical, Best Management Practices ("BMPs") to minimize pollutants in these discharges in the facility site specific SWPPP required by Part 2 of this general permit: Incidental cooling tower mist, provided minimization of toxicity of water treatment chemicals is implemented as BMP.

37. The EPA inspection referenced in Paragraph 21 observed standing water below the cooling tower units had a blue-green coloration. A facility representative indicated that chemicals were added to the preheat tanks of the boiler system and to the cooling tower units. The standing water below the cooling tower units had a blue-green coloration, which suggests that a significant amount of chemicals were present in the water and that Respondent had not implemented BMPs to minimize the toxicity of the water treatment chemicals. The inspector observed two drains near the cooling towers; however, one of the drains was plugged. Stormwater runoff around the plugged drain leads toward the Willow Lane roadway ditch, which flows south from the property line to an unnamed perennial stream approximately 1,700 yards away.

38. Respondent's alleged failure to properly design, implement, or maintain BMPs is a violation of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 4

Failure to Conduct and Document Inspections

39. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

40. Section 2.4.3(d) of Respondent's NPDES Permit requires Respondent to conduct routine site inspections of the facility's designated equipment and storage areas at least quarterly. Respondent must also maintain a record of each inspection on-site or in a readily accessible location for at least three years after the date of the inspection.

41. Section 2.4.4 of Respondent's NPDES Permit requires a comprehensive site

compliance evaluation shall be conducted at least once a year.

42. Section 2.4.5 of Respondent's NPDES Permit requires Respondent to conduct and document, at least annually, a visual examination of a stormwater discharge associated with industrial activity from each identified stormwater outfall. Each report shall document, *inter alia*, the nature of the discharge, the visual quality of the discharge, and probable sources of any observed contamination. Visual examination reports shall be maintained on-site and be made available for inspection upon request.

43. The EPA inspection referenced in Paragraph 21 documented that facility management indicated that the quarterly site inspections were not being conducted or recorded. The EPA inspector spoke with the maintenance manager at the Site, who stated he had started conducting routine Site inspections of the facility's designated equipment and storage areas once per quarter after the SWPPP was revised in April 2011, but the results of the evaluations were not being recorded. Therefore, Respondent failed to conduct quarterly site inspections in December 2010 or March 2011, and failed to document quarterly site inspections in June 2011 and September 2011.

44. The EPA inspection referenced in Paragraph 21 found that facility management stated that they had not conducted comprehensive site evlaulations or visual evaluations of stormwater discharge of their facility since the SWPPP was adopted in 2009. Respondent failed to conduct comprehensive site evaluations and visual examination of a stormwater discharge for 2009 and 2010.

45. Respondent's alleged failure to conduct required inspections is a violation of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

46. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the violations cited above.

CONSENT AGREEMENT

47. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

48. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

49. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

50. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CA/FO.

51. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

52. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

53. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

54. This CA/FO addresses all civil and administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of CWA or any other applicable law.

55. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Site is in compliance with Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

56. The effect of the settlement described in Paragraph 54 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 55 of this CA/FO.

57. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of $30,000 as set forth in Paragraph 1 of the Final Order.

58. Respondent understands that failure to pay any portion of the civil penalty on the proper due date may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to Section 309(g) of CWA, 33 U.S.C. § 1319(g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Thirty Thousand Dollars ($30,000) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2012-0040.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

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

General Provisions

5. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

COMPLAINANT: U.S. ENVIRONMENTAL PROTECTION AGENCY

8-2-13
Date

Karen A. Flournoy for
Director
Water, Wetlands and Pesticides Division

8.02.2013
Date

Kristen Humphrey for
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
SUGAR CREEK PACKING CO.

6-19-13
Date

Name (Print) Thomas J. Bollinger

Title CFO

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

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

8-8-13

Date

IN THE MATTER OF Sugar Creek Packing Co., Respondent
Docket No. CWA-07-2012-0040

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to Respondent:

Peter Tamborski
General Counsel, Sugar Creek Packing Co.
12021 Sheraton Lane
Cincinnati, Ohio 45246

Dated: 8/8/13

Kathy Robinson
Hearing Clerk, Region 7