

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

IN THE MATTER OF)	Docket No. CWA-07-2017-0135
)	
THE BULL MOOSE TUBE CO.)	
)	
Gerald, Missouri)	
)	
Respondent)	COMPLAINT AND CONSENT
)	AGREEMENT / FINAL ORDER
)	
Proceedings under Section 309(g))	
of the Clean Water Act,)	
33 U.S.C. § 1319(g))	
)	

COMPLAINT

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 United States Environmental Protection Agency’s (“EPA”) 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 (“Consolidated Rules of Practice”).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) alleges that the Bull Moose Tube Co., violated Section 301 of the CWA, U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (“Complainant”).

4. The Bull Moose Tube Co. (hereafter “Respondent” or “Bull Moose”) is and was at all relevant times a corporation under the laws of, and authorized to conduct business in, the state of Missouri.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. *See* Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, *inter alia*, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include any individual, corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, garbage, chemical waste and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the "waters of the United States," which are defined at 40 C.F.R. § 122.2 and which include tributaries to waters of the United States.

11. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include, in part, any addition of any pollutant to navigable waters from any point source.

12. 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. That Section 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.

13. 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.

14. 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.

15. 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.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities classified under Standard Industrial Classification (“SIC”) code 34, which includes establishments engaged in metal product fabrication. *See* 40 C.F.R. § 122.26(b)(14)(xi).

16. Section 309(g) of the CWA provides for the assessment of civil penalties for violations of conditions or limitations in a permit issued pursuant to Section 402 of the CWA.

17. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. The EPA maintains concurrent enforcement authority with authorized state programs for violations of NPDES permits.

EPA’s General Allegations

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

19. Respondent is and was at all times relevant to this action the owner and/or operator of a facility that manufactures steel tubing and sprinkler pipe, operating under SIC code 3499. The facility site is comprised of approximately 5.5 acres located at 406 East Industrial Drive, Gerald, Missouri 63037 (hereafter “Facility”).

20. Stormwater, snow melt, surface drainage, and runoff water leave the Facility and discharge to an unnamed tributary of Cedar Fork, which is a tributary of Beouf Creek in the Missouri River Basin. The runoff and drainage from the Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

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

23. Cedar Fork, Beouf Creek and their tributaries are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation, 40 C.F.R. § 122.2.

24. 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).

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

26. MDNR first issued an NPDES stormwater permit to Bull Moose in 1998. Bull Moose's current stormwater permit, NPDES General Permit Number MOR203238 ("Permit"), became effective on October 1, 2014, and will expire on August 31, 2019. The Permit governs Bull Moose's stormwater discharges associated with industrial activity at the site.

27. Bull Moose has operated under the Permit at all times relevant to this Complaint.

28. On or about February 24, 2016, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("EPA Inspection") of Bull Moose's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Bull Moose's compliance with its Permit and the CWA.

29. During the EPA Inspection, the EPA inspector reviewed the records available at the Facility related to the Permit, and observed the Facility site and the receiving waters to which the Facility discharges stormwater.

30. At the conclusion of the EPA Inspection, the EPA inspector issued a Notice of Potential Violation to Bull Moose identifying potential violations of Bull Moose's Permit. A copy of the EPA Inspection Report was sent to Bull Moose by letter dated April 8, 2016. The inspection report identified potential violations, including those described below.

31. In a letter dated October 28, 2016, the EPA sent a request for additional information to Bull Moose under the authority of Section 308(a), 33 U.S.C. § 1318(a). Bull Moose sent a response to this information request dated November 17, 2016.

Allegations of Violation

32. The facts stated above are incorporated by reference. All references to the Permit's terms and requirements regarding quarterly sampling, monitoring, and reporting are to the Permit prior to April 19, 2017.

Count 1

Failure to Conduct and/or Report Quarterly Benchmark Monitoring

33. The "Monitoring Requirements" section of Bull Moose's Permit require permittees to take discharge samples quarterly from all stormwater outfalls with series numbers as specified in the application for the Permit, and to submit a report to MDNR by the specified deadline for each quarter. Permittees are required to sample each outfall at least once per quarter for the months of January-March (1st Quarter), April-June (2nd Quarter), July-September (3rd Quarter), and October-December (4th Quarter). If no discharge occurs during the reporting period, permittees must submit a report to MDNR stating that fact.

34. Bull Moose's application for its Permit, received by MDNR on May 19, 2014, and Bull Moose's Stormwater Pollution Prevention Plan ("SWPPP"), dated February 14, 2014, state that the Facility has five outfalls: 001, 002, 003, 005, and 006.

35. Based on the EPA Inspection and EPA's review of relevant documents, Bull Moose failed to conduct and/or report quarterly benchmark monitoring for Outfalls 002, 003, 005, and 006 for the 4th Quarter of 2014 (October – December), 2nd Quarter of 2015 (April – June), and the 4th Quarter of 2015 (October – December). Bull Moose also did not submit a report to MDNR for those quarters stating no discharge occurred.

36. EPA's review of Bull Moose's benchmark monitoring records beginning in October 2014 indicate that it failed to conduct and/or report any quarterly benchmark monitoring for Outfall 001 from the 4th Quarter of 2014 through the 3rd Quarter of 2016.

37. Bull Moose's failure to perform and/or document quarterly benchmark monitoring is a violation of the terms and conditions of the Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

Count 2

Failure to Conduct and/or Document Corrective Actions

38. Item 3 of the "Monitoring Requirements" section of Bull Moose's Permit states that a Corrective Action Report ("CAR") must be completed and documented in the SWPPP any time a benchmark exceedance occurs. That item defines a CAR as "a document that records the efforts undertaken by the Facility to improve Best Management Practices ("BMPs") to meet benchmarks in future samples."

39. Item 2 of the Permit's "Monitoring Requirements" section states that "[f]ailure to improve BMPs or take corrective action to address a benchmark exceedance and failure to make tangible progress towards achieving a benchmark is a permit violation."

40. During the EPA Inspection, the inspector examined Bull Moose's benchmark monitoring records from the time the Permit went into effect in October 2014 to the date of the inspection on February 24, 2016. The EPA obtained Bull Moose's benchmark monitoring reports submitted to MDNR for the first three quarters of 2016 from Bull Moose through the 308 Information Request and from MDNR.

41. In its benchmark sampling for outfalls 002, 003, 005, and 006, Bull Moose regularly exceeded benchmark concentrations for total recoverable zinc, aluminum, copper and iron, and has also exceeded benchmark levels for oil and grease. The table below shows Bull Moose's reported concentrations for the quarters for which it submitted reports to MDNR from the 4th Quarter 2014 to the 3rd Quarter 2016. For the 1st Quarter 2015, Bull Moose submitted two benchmark reports to MDNR. Benchmark exceedances are displayed in bold.

Parameter	Benchmark Concentration	Outfall	Reported Concentrations (µg/L)					
			1 st Qtr 2015 (2 reports)		3 rd Qtr 2015	1 st Qtr 2016	2 nd Qtr 2016	3 rd Qtr 2016
Aluminum	750 µg/L*	002	1,400	360	--	520	998	31.7
		003	--***	100	--	332	383	11.6
		005	--	120	--	234	259	--
		006	--	100	--	345	--	237
Copper	21.2 µg/L	002	--	--	62.3	10.4	22.6	--
		003	--	--	15	--	21.8	--
		005	--	--	--	10.7	--	--
		006	--	--	--	--	--	--
Iron	1,000 µg/L	002	930	490	1,660	543	4,020	1,040
		003	--	550	104	283	3,300	1,720
		005	--	200	157	719	908	188
		006	--	110	--	210	226	207
Oil & Grease	10 mg/L**	002	--	6.3	--	--	--	55.6
		003	--	^	21.9	--	--	11.8
		005	--	5.8	6.63	12.7	--	--
		006	--	5.6	--	--	--	--
Zinc	176.7 µg/L	002	140	140	6,640	235	55.6	152
		003	590	340	218	210	11.8	410
		005	200	170	526	495	259	251
		006	180	280	302	347	283	192

* Micrograms per Liter; ** Milligrams per Liter; *** Reported as not detectable;
 ^ Reported as broken sample

42. At the time of the EPA Inspection, the inspector found that Bull Moose had not completed and/or documented any CARs following benchmark exceedances since at least October 2014.

43. Bull Moose's failure to complete and/or document adequate CARs following benchmark exceedances is a violation of the terms and conditions of the Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

Count 3
Inadequate SWPPP and Failure to Periodically Amend the SWPPP

44. Item 2 of the "Monitoring Requirements" section of the Permit requires permittees to review their SWPPP and BMPs if a sample exceeds a benchmark concentration to determine what improvements or additional controls are needed to reduce that pollutant in stormwater discharges. Any time a benchmark exceedance occurs, permittees must update their SWPPP to document the CAR that was completed in response to the benchmark exceedance.

45. At the time of the EPA Inspection, the inspector found that Bull Moose had not completed and/or documented CARs in the SWPPP following any of the benchmark exceedances noted in the table above for the 4th Quarter 2014 and all of 2015.

46. Item 1(f) of the “Requirements” section of the Permit states that all facilities must include a provision for evaluating benchmarks established in the Permit in their SWPPPs.

47. Bull Moose’s SWPPP does not contain any provision for evaluating the benchmarks established in the Permit.

48. Item 1 of the “Requirements” section of Bull Moose’s Permit states that the purpose of the SWPPP and the BMPs listed therein is to prevent water pollution. This item requires permittees to review and revise their SWPPP on an ongoing basis to incorporate any site condition changes and to ensure BMPs continue to be appropriate and all provisions of the Permit continue to be implemented. Facilities must list their BMPs and include a narrative of how the BMPs will be implemented to control and minimize the amount of potential contaminants that enter stormwater.

49. Bull Moose’s SWPPP does not include a narrative that adequately explains how BMPs will be implemented to control and minimize contaminants.

50. Item 2(c) of the “Requirements” section of the Permit requires all facilities to implement a minimum BMP to ensure that all paints, solvents, petroleum products, petroleum waste products (except fuels), and storage containers (such as drums, cans, or cartons) are stored in such a way that they are not exposed to stormwater, or provide other prescribed BMPs to prevent the commingling of stormwater with container contents.

51. Section 5.0 of Bull Moose’s SWPPP addresses the storage of paints, solvents, petroleum products, and storage containers to prevent commingling with or exposure to stormwater, although this is not listed as a BMP. Lubricants, other fluids, and storage containers are to be stored in either an oil shed or a manufacturing building on site to prevent commingling with stormwater.

52. During the EPA Inspection, the inspector found a pool of green fluid, which appeared to be a lubricant or coolant, outside near the loading area in an area potentially exposed to stormwater. The inspector also observed a sheen in the weir box at Outfall 002, indicating the presence of oil. The inspector’s observations indicate the minimum BMP for paints, solvents, petroleum products, and storage containers was not being successfully implemented at the Facility.

53. Item 2(f) of the “Requirements” section of the Permit requires all facilities to implement a minimum BMP to provide good housekeeping practices on-site to keep solid waste from entering waters of the state.

54. Section 8.0 of the SWPPP requires Bull Moose to implement a “Grounds Maintenance” BMP, although it does not contain a schedule to ensure regular inspections and removal of potential contaminants.

55. During the EPA Inspection, the inspector observed litter below several of the outfalls, indicating that the good housekeeping BMP was not being successfully implemented.

56. Bull Moose’s failure to maintain and/or update an adequate SWPPP are violations of the terms and conditions of the Permit, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA’s implementing regulations.

Count 4
Failure to Conduct and/or Document All Monthly Site Inspections

57. The “Requirements” section of Bull Moose’s Permit requires permittees to perform monthly site inspections. The inspections must include the name of the inspector, the signature of the inspector, the date, observation and analysis of BMP effectiveness, BMP deficiencies, and corrective actions that will be taken. BMP deficiencies must be corrected within seven days and documented in the monthly inspection report. Inspection reports must be kept on-site with the permittee’s SWPPP and available upon request.

58. During the EPA Inspection, the inspector found that Bull Moose failed to perform and/or document the monthly inspections for the following months: October and December 2014; and February, June, July, and November 2015. In addition, the monthly site inspections for January, September, and October 2015 were missing the date and/or the name and signature of the inspector, as required by the Permit.

59. Bull Moose’s failure to conduct and/or document monthly site inspections is a violation of the terms and conditions of the Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA’s implementing regulations.

Count 5
Failure to Follow Proper Sampling Procedures

60. Standard Conditions Part I of Bull Moose’s Permit requires permittees to comply with the requirements of 40 C.F.R. 122.41, which incorporates by reference the monitoring test procedures approved under 40 C.F.R. Part 136. *See* 40 C.F.R. 122.41(j)(4).

61. Table A-1 in the “Monitoring Requirements” section of the Permit requires permittees to collect and report a grab sample for pH once per quarter.

62. Table 2 of 40 C.F.R. § 136.3 requires that all pH grab samples be analyzed within 15 minutes.

63. The EPA Inspection and Bull Moose's benchmark sampling reports indicate that Bull Moose sends its quarterly benchmark samples, including its pH grab samples, to ESC Lab Sciences, an outside contractor, for analysis. The pH samples are often not analyzed until at least the following day after they are collected, beyond the 15-minute time limit for pH grab sample analysis.

64. Bull Moose's failure to follow proper sampling and analysis procedures in accordance with 40 C.F.R. Part 136 is a violation of the terms and conditions of the Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

CONSENT AGREEMENT

65. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

66. 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.

67. Respondent neither admits nor denies the factual allegations contained in this Complaint and CA/FO.

68. Respondent waives any right to contest the allegations set forth in this CA/FO and its right to appeal this Consent Agreement and the accompanying Final Order.

69. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

70. This CA/FO addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this CA/FO. The EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law. The EPA further reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

71. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251, *et seq.*, and all regulations promulgated thereunder.

Penalty Payment

72. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil penalty of **Eleven Thousand Nine Hundred and Nine Dollars**

(\$11,909) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than thirty (30) days after the effective date of this Consent Agreement/Final Order as set forth below.

73. The payment of penalties must reference docket number “CWA-07-2017-0135” and be remitted using one of the payment methods specified in Appendix A of this Order.

74. Copies of the check, or verification of another payment method for the penalty payment remitted as directed above, shall be mailed to:

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

and to:

Katherine Reitz
Attorney Advisor
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

75. Respondent agrees that 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.

76. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interests.

Supplemental Environmental Project

77. Respondent agrees to undertake the Supplemental Environmental Project (“SEP”), identified in Appendix B, which is attached to and incorporated into this CA/FO. The parties agree that performance of the SEP is intended to secure significant environmental or public health protection and improvements.

a. Project Description: Respondent will place concrete on a portion of what is now a gravel area at its Facility, located at 406 East Industrial Drive, Gerald, Missouri 63037. The area where concrete will be placed includes the loading dock area where various oils and chemicals are unloaded. This project will create a

barrier between the ground and any spilled materials, allowing any spills to be contained and cleaned more effectively and maximizing the ability of Respondent to reduce pollutants in stormwater runoff.

b. SEP Cost: The total expenditure for the SEP shall not be less than Eighty Seven Thousand Seven Hundred Dollars (\$87,700).

c. Completion Date: All work on the project shall be fully completed by December 30th, 2017.

78. Within thirty (30) days of the SEP Completion Date, as identified in Paragraph 77.c. above, Respondent shall submit a SEP Completion Report to EPA, with a copy to MDNR.

- a. The SEP Completion Report shall contain the following:
- (i) A detailed description of the SEP as implemented;
 - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; and
 - (iii) The following certification signed by Respondent or its authorized representative:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

Seth Draper, or his successor
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties as described in Paragraph 79, below.

79. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-upon Amount:

a. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost described in Paragraph 77.b., Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of Forty Five Thousand One Hundred and Sixty Six Dollars (\$45,166);
- (ii) If the SEP is completed in accordance with Paragraph 77, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States equal to the difference between the amount of the estimated SEP Cost set forth in Paragraph 77.b. and the amount actually expended in implementing the SEP;
- (iii) Respondent shall not be liable for stipulated penalties if:
 - a. The SEP is not completed in accordance with this CA/FO, but the Complainant determines that the Respondent: (1) made good faith and timely efforts to complete the project; and (2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; or
 - b. The SEP is completed in accordance with this CA/FO, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project; and
- (iv) Respondent shall pay a stipulated penalty in the amount of \$100 for each day it fails to submit the SEP Completion Report after the due date specified in Paragraph 78, until the report is submitted.

b. Payment of stipulated penalties shall be immediately due and payable upon notice by EPA. Interest and late charges shall be paid as described in Paragraph 76 above.

c. The EPA may, in its discretion, reduce or waive stipulated penalties otherwise due under this CA/FO.

80. Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other action in any forum. Respondent further certifies that Respondent has not received and will not receive credit for the SEP in any other enforcement action.

81. Respondent certifies that all cost information provided to the EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent, in good faith, estimates that the cost to implement the SEP is at least \$87,000.

82. Respondent agrees that, for federal income tax purposes, Respondent will not deduct any costs or expenditures incurred in performing the SEP.

Effect of Settlement and Reservation of Rights

83. Respondent's payment of the entire civil penalty and completion of SEPs pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Compliant and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

84. This CA/FO shall apply to and be binding upon Respondent, its agents, successors, and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms, or other persons or entities acting under or for them, with respect to matters included herein, comply with the terms of this CA/FO.

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

86. With respect to matters not addressed in this CA/FO, the EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties, and damages.

General Provisions

87. The Parties acknowledge that this Consent Agreement/Final Order is subject to public notice and comment requirements pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

88. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective on the date the Final Order is filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

89. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

90. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

91. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA.

92. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

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

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Date

Katherine Reitz
Attorney Advisor

Date

RESPONDENT:
THE BULL MOOSE TUBE CO.:

Jeffrey L. Osterman
Name

JEFFREY L. OSTERMAN

Plant Manager
Title

7-11-17
Date

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

**APPENDIX A
PENALTY PAYMENT INFORMATION**

Further information regarding making payments to the U.S. Environmental Protection Agency may be found at: <http://www.epa.gov/financial/makepayment>

Cashier's or Certified Check: If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America":

By U.S. Postal Service:

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

By Common Carrier (Fedex, DHL, UPS):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Wire Transfers: If payment is being made by wire transfer, the wire transfer must indicate the name and docket number of this case and be sent to the Federal Reserve Bank in New York City with the following information:

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"

Automated Clearing House (ACH) or Remittance Express (REX): If using ACH or REX, payments must indicate the name and docket number of the case and can be made through the U.S. Treasury using the following information:

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

Transaction Code 22 – checking
Physical location of U.S. Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
U.S. Treasury Contact Information:
John Schmid: 202-874-7026
Remittance Express (REX): 1-866-234-5681

Online Payment: Online payment is available through the Department of Treasury and can be accessed using the information below.

www.pay.gov

Enter “SFO 1.1” (without quotation marks) in the SEARCH field. The first search result should be titled “EPA Miscellaneous Payments – Cincinnati Finance Center,” SFO Form Number 1.1. Click on the red button that says, “Continue to the form.”

Complete the required fields and pay with a bank account (ACH) or debit/credit card. Keep a copy of the confirmation page for your records.

Payment Tips: To ensure proper credit please include the following information on your payment:

- Company/remitter’s name (as it appears on the EPA document)
- Complete address, including city, state, zip
- Name and phone number of remitter’s point of contact
- EPA docket number
- EPA contact name and phone number, if available
- Reason for payment

Note: It is important to direct payment to the appropriate EPA finance center to ensure your remittance is credited to the proper account. Each finance center has its own unique agency location code, and each U.S. depository has a unique bank routing number.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT – SCOPE OF WORK

In satisfaction of its obligations under this Consent Agreement/Final Order, the Bull Moose Tube Company (Respondent) will complete the following Supplemental Environmental Project (SEP). A SEP is a beneficial environmental project that Respondent has voluntarily agreed to undertake as part of the resolution and settlement of this matter, but one which the Respondent is not otherwise legally required to perform and that primarily benefits public health or the environment. The EPA has approved the following SEP, in addition to the mitigated administrative penalty set forth in this CA/FO, for the settlement of this matter.

1. The SEP described in this Scope of Work is designed to improve water quality and reduce pollutants in stormwater runoff from Respondent's Facility located at 406 East Industrial Drive, Gerald, Missouri 63037.
2. The SEP involves the placement of concrete on the surface of a portion of the Facility's property, which currently has a gravel surface. The area to be resurfaced with concrete includes the Facility's loading dock area, where various oils and chemicals are unloaded. In the event of a spill, leak, etc., the concrete surface will reduce sediment runoff and allows spills to be contained and cleaned more effectively, thereby reducing other potential pollutants that might be discharged with stormwater.
3. The SEP will be completed in two phases. A facility map showing the location of these two phases is attached to this SEP Scope of Work.
4. Both Phase 1 and Phase 2 of the SEP will be completed by December 30, 2017.
5. The SEP cost includes the following:
 - a. \$46,000 for Phase 1, which includes 7,326 square feet of 8 in. concrete over an area of 49 ft. x 148 ft., reinforced with #4 re-rods on 3 ft. centers and fibermesh; and
 - b. \$41,712 for Phase 2, which includes 6,642 square feet of 8 in. concrete over an area of 123 ft. x 54 ft. with #4 re-rods on 3 ft. centers and fibermesh.
6. Respondent has contracted with Bob Jarvis Contracting, LLC, 1939 Kamper Road, Gerald, Missouri 63037, to complete construction of the SEP.

