

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
Sioux City Compressed)	
Steel Company, Inc.)	
)	Docket No. CWA-07-2020-0116
)	
Respondent)	
)	COMPLAINT AND
Proceedings under)	CONSENT AGREEMENT/
Section 309(g) of the Clean Water Act,)	FINAL ORDER
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's") 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. Complainant, the United States Environmental Protection Agency Region 7 ("EPA" or "Complainant") and Respondent, Sioux City Compressed Steel Company, Inc., d/b/a Compressed Steel, Inc. (hereafter, "Compressed Steel" or "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) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent violated its National Pollutant Discharge Elimination System ("NPDES") permit for stormwater discharges associated with industrial activity, issued under the authority of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator of EPA Region 7, who in turn has delegated the authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent is and was at all times relevant a corporation under the laws of, and authorized to do business in, the state of Iowa.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants 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. 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 conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. 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.

9. 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.

10. 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 under Standard Industrial Classifications 5015 and 5093 involved in the “recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards.” *See* 40 C.F.R. § 122.26(b)(14)(vi).

11. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. The IDNR issued and implemented NPDES General Permit No. 1 (“GP #1”) for

Storm Water Discharge Associated with Industrial Activity. The most recent 5-year permit has an effective date of March 1, 2018, and an expiration date of February 28, 2023, with previous 5-year permits having been issued in 2003, 2008, and 2013. The relevant provisions of each permit, as reissued, are substantially the same. The permit that was set to expire October 1, 2017 was administratively extended until reissuance of the permit, which occurred on March 1, 2018.

13. Any individual seeking coverage under GP #1 is required to submit a Notice of Intent (“NOI”) to the IDNR in accordance with the requirements of Part II. of the permit. Respondent submitted NOIs to IDNR to obtain authorization under GP #1.

14. As required by Part III.C.1 of GP#1, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in the Permit, must be completed and maintained on site before the NOI is submitted to the IDNR, and executed concurrently with operations at the facility.

EPA’s General Allegations

15. Respondent is, and was at all times relevant to this action, the owner and/or operator of a facility known as the Sioux City Compressed Steel Company, located at 2600 Boulevard of Champions, Sioux City, IA 51101 (“Facility”), and the facility operates under SIC 5093.

16. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge via stormwater outfalls into adjacent ditches that join and flow to the Missouri River.

17. The runoff and drainage from Respondent’s Facility are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

19. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and Section VIII of the GP #1 (Definitions), which state such discharges include stormwater discharges from facilities operating under SIC code 5093.

20. The Facility is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The Missouri River, as identified in Paragraph 16, above, is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. 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).

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

24. The NOIs filed by Respondent to obtain permit authorization under GP#1 state that the Missouri River receives stormwater runoff from the Facility. Based on the NOIs filed by Respondent, the facility was authorized (IA-3115-2954) by the IDNR to discharge storm water associated with industrial activity in accordance with the terms and conditions of GP#1. Initial authorization was issued to Respondent by IDNR on February 1, 1997 and was most recently renewed on September 13, 2017 and provides coverage through October 1, 2022.

25. At all times relevant, the Respondent has operated under authorization of the Permit and the provisions of the GP #1 have remained substantially the same.

26. On or about September 30, October 2, and October 4, 2019, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with GP #1 and the CWA.

27. During the Inspection, the EPA inspector reviewed Respondent's records related to the GP #1, including Respondent's SWPPP for the Facility (dated June 14, 1999) and the SWPPP's description of stormwater outfalls and stormwater controls. EPA's review of the SWPPP found that the SWPPP documented surface runoff from the east side of the Facility drained into two oil/water separators that discharged into a containment basin ("east containment basin") along the eastern edge of the Facility (estimated 600 feet x 70 feet, with a 50 year/30 minute design capacity). The SWPPP describes the east containment basin as discharging into a ditch/channel on the east side of the Facility. The east channel flows south along the facility's east boundary where it joins the area drainage ditch that flows along the southern edge of the Facility, and then flows into the Missouri River. The SWPPP also describes surface runoff from the west section of the Facility flows south toward the inlet of a sediment pond located in the southwest corner of the property ("west sediment pond"), that also discharges into the drainage ditch that flows to the Missouri River.

28. During the inspection, EPA observed and documented the following:

- a. the east containment basin described by the SWPPP had been removed;
- b. surface runoff from the east section of the facility now flows into the inlets of the two oil/water separators;
- c. the oil/water separators discharge directly to the eastern channel/ditch;
- d. during the inspection, the oil water separators were full and overflowing and discharging into the adjacent ditch/channel (Outfall 01 and Outfall 02);
- e. significant ground discoloration throughout the site, including at the stormwater inlet to an oil/water separator, and adjacent to leaky equipment and two 1,500-gallon diesel fuel tanks;

- f. Spill kits were not found onsite as described in the SWPPP;
- g. the remaining western sediment pond was filled with heavy vegetation, limiting the capacity of the pond;
- h. significant amounts of solid waste and debris were present throughout the site;
- i. the facility had no records or documentation of spills or required inspections for the stormwater prevention program;
- j. the facility had no records of any training on the stormwater prevention program; and
- k. non-structural controls were not being implemented by facility personnel and structural controls to prevent non-stormwater discharges were missing from the site.

29. At the conclusion of the inspection, the EPA issued the Respondent a Notice of Potential Violation (“NOPV”) identifying issues determined to be potential violations of Respondent’s authorization under GP#1, including:

- a. significant areas with soil staining that appeared to be significant spills of amount petroleum and oils and discolorations by hydraulic fluids;
- b. the failure to conduct the annual employee SWPPP training as required by the NPDES permit (GP#1, Part III. C.4.B(8) and the SWPPP;
- c. the failure to conduct adequate site inspections of stormwater Best Management Practices (“BMPs”) and outfalls (GP#1, Part III.C.4.B.C); and
- d. the failure to implement a preventive maintenance program that involves inspections, maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins), as well as inspecting and testing plant equipment and systems to identify conditions that could cause breakdowns or failures (GP#1, Part III.C.4.B.(3)).

30. The NOPV offered the Respondent an opportunity to reply, within ten days of receipt, to address any of the potential violations identified by the EPA inspector. Respondent provided a response to the EPA inspector by email dated October 11, 2019, identifying actions it was taking to address issues identified in the NOPV.

31. A copy of the Inspection report narrative was mailed by the EPA to Respondent by letter dated December 5, 2019.

EPA's Specific Allegations

Count 1

Failure to Develop, Implement and/or Maintain Appropriate Controls

32. The allegations stated above are re-alleged and incorporated herein by reference.
33. GP#1, Part III.C, requires the development and full implementation of the facility's SWPPP concurrent with beginning operations at the facility.
34. GP#1, Part III.C.4.B, requires the facility to develop and implement storm water management controls appropriate to the facility to address identified potential sources of pollutants at the facility, as further detailed in GP#1, Part III.C.4.B.(1) through (10).
35. GP#1, Part III.C.4.B.(3) requires that the SWPPP describe a preventive maintenance program that involves inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.
36. The Facility's SWPPP requires that sedimentation buildup should be removed as necessary from the east detention basin and west sedimentation basin, that discharge culverts should be maintained and repaired as needed, and that grading and contouring be maintained to assure stormwater flow is captured by the basins.
37. The Facility's SWPPP requires that the oil/water separators (Vortechinics™ Oil/Sediment Knockout Boxes) be inspected, that accumulated sediments and oils be removed and disposed of in a timely manner, and a preventative maintenance and repair program be established.
38. Based on observations documented during the Inspection and review of information provided by the Facility, the EPA finds that Respondent failed to fully develop, implement and/or maintain appropriate controls as required by GP#1 Part III.C and/or the Facility's SWPPP.
39. Respondent's failure to implement adequate stormwater management controls is a violation of the conditions and limitations of Respondent's GP#1, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP

40. The allegations stated above are realleged and incorporated herein by reference.

41. GP#1, Part III.C.3 requires that the SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential to discharge pollutants, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activities.

42. Based on observations documented during the Inspection, review of information provided by the Facility, and other relevant information, the EPA finds that Respondent failed to have an adequate and accurate SWPPP and/or to amend the Facility's SWPPP as required by GP#1, Part III.C. Specific deficiencies of the Facility's SWPPP at the time of EPA's inspection included:

- a. The SWPPP defined the acreage of the operation as 24 acres, however the current size of the facility is at least 36 acres;
- b. The SWPPP narrative describes an eastern containment basin, however the basin was removed in 2005; and
- c. The SWPPP site map does not describe all of the locations of outfalls from the oil/water separators.

43. Respondent's failures to develop an adequate and accurate SWPPP and/or to amend the Facility's SWPPP are each violations of GP#1, Part III.C.3, and as such, are violations of the conditions and limitations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3

Failure to Conduct and/or maintain records of Stormwater Inspections or spills

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

45. GP#1, Part III.C.4(b)(9) requires that the facility will document incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the inspection records. Inspection and maintenance activities shall be documented and recorded.

46. GP#1, Part IV.C.4(C)(1) requires the facility SWPPP to designate the frequency of facility inspections during storm water discharges, but in no case less than once a year.

47. GP#1, Part IV.C.4(C)(3) requires the facility to document the required inspections including the personnel making the inspections, the date(s) of the inspections, major observations relating to the implementation of the SWPPP, and corrective actions, and requires these reports be retained as part of the SWPPP for at least three years.

48. The SWPPP (Section 6) requires that the facility will conduct visual monitoring of the facility no less than once per year.

49. The EPA Inspector reviewed Respondent's inspection and monitoring data. The facility only had inspection records for 1999 and 2018. Despite evidence of spills throughout the facility, Respondent did not have records of spills or corrective actions, inspection records, and/or did not perform the required stormwater inspections for 2015, 2016, 2017, and 2019.

50. Based on observations documented during the Inspection, as described above, review of information provided by the Facility, and other relevant information, the EPA finds that Respondent failed to document spills, conduct required inspections, document the inspections and/or maintain records of such spills and inspections, as required by Parts III.C IV.C of GP #1 and the Facility's SWPPP.

51. Respondent's failure to document spills and conduct/document inspections and maintain records are violations of the conditions and limitations of GP#1, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4
Failure to Conduct Employee Training**

52. The allegations stated above are re-alleged and incorporated herein by reference.

53. GP#1, Part III.C.4,B(8) requires employee training for all components of the SWPPP including but not limited to spill response, good housekeeping, and material management practices.

54. The SWPPP (Section 5) requires the facility to conduct and maintain records of employee trainings.

55. Based on observations documented during the Inspection, as described above, review of information provided by the Facility, and other relevant information, the EPA finds that Respondent failed to perform training and maintain records of employee training, as required by GP#1, Part III.C.4.B(8) and the Facility's SWPPP.

56. Respondent's failure to conduct employee training for the stormwater prevention program and/or to maintain records of such training are violations of the conditions and limitations of GP#1, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

CONSENT AGREEMENT

57. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

58. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

59. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

60. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

61. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

62. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

63. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

64. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/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 Consent Agreement/Final Order.

65. Respondent certifies by signing this Consent Agreement/Final Order that Respondent is currently in compliance with all requirements of NPDES Permit IA-3115-2954 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its applicable regulations.

66. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

Penalty Payment

67. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of THIRTEEN THOUSAND, FIVE HUNDRED DOLLARS (\$13,500) pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

68. Respondent shall pay the penalty identified in Paragraph 67 by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2020-0116 to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to Lisa Haugen, EPA Region 7, Regional Hearing Clerk, at haugen.lisa@epa.gov and Howard Bunch, EPA Region 7, Attorney, at bunch.howard@epa.gov.

69. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

70. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any 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 or interest.

Effect of Settlement and Reservation of Rights

71. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint 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.

72. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 65 of this Consent Agreement/Final Order.

73. Nothing contained in this Consent Agreement/Final Order 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.

74. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

75. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

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

77. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing 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.

78. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

79. 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.

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

For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Howard Bunch
Office of Regional Counsel

For the Respondent, Sioux City Compressed Steel Company.:

JUNE 8, 2020
Date


Signature

DAVID BERNSTEIN
Name

SECRETARY
Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the 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

CERTIFICATE OF SERVICE

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

Copy by email to Respondent:

Sioux City Compressed Steel Company, Inc.
Attention: David Bernstein (President)
2600 Boulevard of Champions
P.O. Box 3262
Sioux City, Iowa 51101
dbx@StateSteel.com

Copy by email to Attorney for Complainant:

Howard Bunch
U.S. Environmental Protection Agency - Region 7
bunch.howard@epa.gov

Copy by email to the Iowa Department of Natural Resources:

Ted Petersen
IDNR Environmental Program Supervisor
ted.petersen@dnr.iowa.gov

Date

Lisa Haugen
Hearing Clerk, Region 7