

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SUNDANCE LUMBER COMPANY, INC.

Springfield, Oregon

Respondent.

DOCKET NO. CWA-10-2022-0030

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,584 per day for each day during which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg. 83818 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues,

and Sundance Lumber Company, Inc. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). At the time of the violations, “waters of the United States” was defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2 (1993); 40 C.F.R. § 122.2 (2016).

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.8. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification code 2421 (Sawmills and Planing Mills). 40 C.F.R. § 122.26(b)(14).

3.9. The State of Oregon, through the Oregon Department of Environmental Quality (“ODEQ”), is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity.

3.10. On August 1, 2017, ODEQ renewed the 1200-Z Stormwater Discharge General Permit (“the Permit”). The Permit became effective on August 1, 2017, and was effective until July 1, 2021. The Permit authorized, subject to the terms and conditions of the permit, the

discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification code 2421.

General Allegations

3.11. Respondent is a corporation and is therefore a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.12. At all times relevant to this action, Respondent owned and operated the Sundance Lumber Company, Inc. facility located at 1001 North 35th Street in Springfield, Oregon (“Facility”).

3.13. The primary operations conducted by Respondent at the Facility include manufacturing finished lumber from logs, which is an activity categorized under Standard Industrial Classification Code 2421 (Sawmills and Planing Mills).

3.14. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater into the Willamette River via three identified outfalls. The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.15. Each of the Facility’s three identified outfalls are a “point source” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.16. The Willamette River is a navigable waterway under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403. Thus, the Willamette River is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.17. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by Permit number ORR221024.

3.18. At all times relevant to this Order, Respondent was implementing a Stormwater Pollution Control Plan (“SWPCP”) dated December 29, 2017, at the Facility.

3.19. On January 27 – 28, 2020, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent’s compliance with the Permit and Sections 301 and 402 the CWA, 33 U.S.C. §§ 1311 and 1342.

3.20. As part of the inspection, EPA reviewed Respondent’s SWPCP, discharge monitoring reports, Tier 1 Corrective Action Reports, monthly inspection records, annual training records, and spill logs.

Violations

3.21. As described below, EPA alleges that, after obtaining coverage under the Permit, Respondent violated certain terms and conditions of the Permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Count 1 – Failure to Properly Document Best Management Practices in Facility’s SWPCP

3.22. Schedule A.3.a and Schedule A.7.b.vi of the Permit require that Respondent describe in the Facility’s SWPCP all best management practices (“BMPs”) installed to meet the narrative technology-based and numeric effluent limits in Schedule A.1, A.2, and Schedule E of the Permit.

3.23. EPA alleges that Respondent violated Schedule A.3.a and Schedule A.7.b.vi of the Permit, by failing to include descriptions in the Facility’s SWPCP of the filters, wattles, and other BMPs installed to meet the narrative technology-based and numeric effluent limits in Schedule A.1, A.2, and Schedule E of the Permit in any month from December 2017 – January 2020. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2 – Failure to Develop Tier 1 Corrective Action Reports for Benchmark Exceedances

3.24. Schedule A.10.a of the Permit requires that Respondent develop a Tier 1 Corrective Action Report if stormwater monitoring results exceed any applicable state-wide benchmarks or sector-specific benchmarks identified in the Permit.

3.25. EPA alleges that Respondent violated Schedule A.10.a of the Permit, by failing to develop Tier 1 Corrective Action Reports in response to exceedance of Chemical Oxygen Demand (“COD”) sector-specific benchmarks at the Facility in April 2018, January 2019, and March 2019 and exceedance of Total Zinc state-wide applicable benchmarks at the Facility in December 2018. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3 – Failure to Minimize Exposure of Fixed Fueling Area

3.26. Schedule A.1.a of the Permit requires that Respondent minimize exposure of fixed fueling areas to rain, snow, snowmelt, and runoff.

3.27. EPA alleges that Respondent violated Schedule A.1.a of the Permit, by failing to minimize exposure of a fixed diesel fueling area to rain, snow, snowmelt, and runoff. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4 – Failure to Minimize Exposure of Leak-Prone Equipment

3.28. Schedule A.1.a of the Permit requires that Respondent minimize exposure of leak-prone equipment to rain, snow, snowmelt, and runoff.

3.29. EPA alleges that Respondent violated Schedule A.1.a of the Permit, by failing to minimize exposure of leak-prone equipment to rain, snow, snowmelt, and runoff at the Facility, resulting in an oily sheen. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5 – Failure to Cover Waste

3.30. Schedule A.1.c of the Permit requires that Respondent cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to pollutants potentially associated with that waste.

3.31. EPA alleges that Respondent violated Schedule A.1.c of the Permit, by failing to cover dumpsters at the Facility containing scrap metal waste with a potential for drainage of

stormwater through the waste. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 6 – Failure to Perform Annual Employee Education and Training

3.32. Schedule A.1.j.iii.(3) of the Permit requires that Respondent perform employee education and training annually.

3.33. EPA alleges that Respondent violated Schedule A.1.j.iii.(3) of the Permit, by failing to perform annual employee education and training in 2019. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 7 – Failure to Update SWPCP

3.34. Schedule A.6.e and Schedule B.10.a of the Permit require that Respondent maintain the Facility’s SWPCP as necessary to reflect applicable changes to the Facility.

3.35. EPA alleges that Respondent violated Schedule A.6.e and Schedule B.10.a of the Permit, by failing to maintain the Facility’s SWPCP to reflect applicable changes to the Facility. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$64,500.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
potokar.steven@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional expenses incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

TERRY HICKSON
Owner
Sundance Lumber Company, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10