

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2023-0112
Scrap Management, LLC d/b/a)	
Rivers Edge Scrap Management,)	
)	COMPLAINT AND
Respondent)	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 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 ("EPA"), and Respondent, Scrap Management LLC d/b/a Rivers Edge Scrap Management, ("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 has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

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, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the "Complainant") with concurrence by the Office of Regional Counsel.

5. Respondent Scrap Management, LLC d/b/a Rivers Edge Scrap Management is and was at all relevant times a limited liability company under the laws of the state of Kansas.

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 a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The 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 the CWA, 33 U.S.C. § 1362.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States.”

9. 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 comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. 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.

11. 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.

12. In part, 40 C.F.R. § 122.26(b)(14)(vi) defines “industrial activity” as including “Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.”

13. 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 the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA or condition or limitation of a

permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, requiring such person to comply.

EPA's General Allegations

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

16. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the facility at 836 S. 26th Street, Kansas City, Kansas 66106 (hereinafter the "Site" or "Facility"), which occupies 4.7718 acres. Respondent's Facility accepts and processes ferrous and non-ferrous metals from commercial and private sources.

17. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's Facility via the southeast corner of the Site, entering the Unified Government of Wyandotte County and Kansas City, Kansas' Municipal Separate Storm Sewer System ("MS4") and the Kansas River.

18. 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 the CWA, 33 U.S.C. § 1362(14).

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

20. The Kansas River is a traditionally navigable water and a "water of the United States."

21. Stormwater runoff from Respondent's industrial activity at the Site 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).

22. 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.

23. On February 6, 2015, KDHE granted authorization to Respondent for stormwater discharges associated with industrial activity under Kansas' NPDES General Permit, state permit number G-KS27-0050, federal permit number KSR000952 (the "Permit"). Respondent submits a renewal form along with a permit fee each year for continuing coverage under Kansas' NPDES General Permit. The current NPDES General Permit is effective from November 1, 2021, to October 31, 2026. This NPDES General Permit governs Respondent's stormwater discharges that are associated with industrial activity at the Site, including the recycling and reclamation of materials.

24. The principal requirement of the NPDES Permit is for the owner and operator to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP" or "SWP2"). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from the construction activities, describe and ensure the implementation of best management practices ("BMPs") that will be used to reduce the pollutants in stormwater discharge associated with construction activities at the construction Site, and to assure compliance with the terms and conditions of the Permit.

25. On April 25, 2022, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Site to determine Respondent's compliance with the NPDES permit and the CWA. During the EPA inspection, the EPA inspector requested copies of documents related to the Permit, including the Site's SWPPP, toured the Site, and photographed various stormwater-related areas.

26. On April 26, EPA personnel returned to the Site, at which point Respondent was able to provide a copy of its SWPPP. EPA personnel conducted an exit interview with Respondent's staff on May 4, 2022.

EPA's Allegations

Count 1

Failure to Select, Install, Utilize, Operate, and/or Maintain Site Specific Structural BMPs

27. The facts stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

28. Part 2.2 of the Respondent's NPDES Permit states "The SWP2 Plan shall evaluate BMPs from each of three major classes: managerial/administrative BMPs, structural control BMPs and non-structural control BMPs" and "the permittee shall review, evaluate, select, install, utilize, operate and maintain the BMPs in accordance with best professional judgement, generally accepted and scientifically defensible guidance and the concepts and methods as described in Environmental Protection Agency guidance documents".

29. During the EPA Inspection, the inspector confirmed, based on his review of the records provided and visual observations at the site, that structural control BMPs did not exist on site.

30. The Respondent's failure to select, install, utilize, operate, and maintain site specific BMPs is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 2

Failure to Ensure Good House Keeping and Spill Prevention

31. The facts stated in Paragraphs 1 through 30 above are re-alleged and incorporated herein by reference

32. NPDES Permit Section 2.4.3 and SWPPP Section 3 require good housekeeping techniques and spill prevention practices.

33. During the EPA Inspection, the inspector observed the following failures to implement good housekeeping and spill prevention practices in accordance with the NPDES permit and SWPPP:

- a. Outside areas were not maintained in a clean and orderly manner.
- b. There was significant ground discoloration near the vicinity of a 50 gallon drum containing used lubricants.
- c. The 500-gallon off-road diesel fuel tank and the 50-gallon drum did not have secondary containment.
- d. Car batteries were seen stored outside on the ground.

34. The Respondent's failure to ensure good housekeeping and spill prevention practices are a violation of the conditions of the Respondent's NPDES Permit.

Count 3

Failure to Retain the SWPPP Onsite

35. The facts stated in Paragraphs 1 through 34 above are re-alleged and incorporated herein by reference.

36. NPDES Permit Sections 2.1 states "The SWP2 Plan is to be retained on site and made available to KDHE, EPA, or MS4 upon request".

37. During the EPA Inspection, the Respondent did not have the SWPPP available upon the inspector's request, however the respondent provided a copy of the SWPPP the next day.

38. The Respondent's failure to ensure the SWPPP was available onsite is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 4

Inadequate and Outdated SWPPP

39. The facts stated in Paragraphs 1 through 38 above are re-alleged and incorporated herein by reference.

40. NPDES Permit Part 2 establishes the required elements of the SWPPP.

41. The EPA Inspection and reviews of the SWPPP confirmed did not include the following required elements:

- a. Updated Facility Description.
- b. Site Map with all requirements listed in NPDES Permit Section 2.4.2.b.
- c. Updated Section 1.6 of SWPPP referencing the correct Multi-Sector General Permit.
- d. A Specific Inventory of Exposed Materials as required by NPDES Permit Section 2.4.2.c.
- e. A Specific and adequate Risk Identification and Summary of Potential Pollutant Sources as required by NPDES Permit Section 2.4.2.e.
- f. A Spill Prevention and Response Procedures with all information required in NPDES Permit Section 2.4.3.c.
- g. Frequency of Inspections and Visual Examinations of Stormwater Quality as required by the NPDES Permit.

42. The Respondent's failure to ensure an adequate and updated SWPPP is a violation of the conditions and limitations of the Respondent's NPDES Permit.

Count 5

Failure to Conduct Employee's SWPPP Training

43. The facts stated in Paragraphs 1 through 42 above are re-alleged and incorporated herein by reference.

44. NPDES Permit Section 2.4.3.e and SWPPP Section 3.5 require Employee training programs to inform personnel responsible for implementing activities identified in the SWP2 Plan or otherwise responsible for stormwater management, at all levels of responsibility, of the components and goals of the SWPP. The SWPP shall provide for training existing and new staff.

45. During the EPA Inspection, the Inspector confirmed, based on his records review, Scrap Management failed to conduct employee's SWPPP training.

46. The Respondent's failure to conduct employee's SWPPP training is a violation of the conditions of the Respondent's NPDES Permit.

Count 6

Failure to Conduct and/or Document Routine Facility Inspections, Comprehensive Annual Site Compliance Evaluations, and Annual Visual Examinations of Stormwater Discharges

47. The facts stated in Paragraphs 1 through 46 above are re-alleged and incorporated herein by reference.

48. NPDES Permit Section 2.4.3.d states trained personnel shall "inspect at appropriate intervals, (inspection frequency shall be stated in SWP2 Plan, but at a minimum quarterly inspections shall be performed), designated equipment and storage areas for raw material, finished product, chemicals, recycling, equipment, paint, fueling and maintenance; and loading, unloading, and waste management areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. The inspection report shall include completion dates for correction of all deficiencies. Records of inspections shall be maintained on-site or in a readily accessible location for at least three years after the date of the inspection."

49. NPDES Permit Section 2.4.4 requires at a minimum an annual comprehensive site compliance evaluation. NPDES Permit Section 2.4.4 establishes the requirements of this evaluation and requires the evaluations to be kept with the SWPPP.

50. NPDES Permit Section 2.4.5 states "Visual Examination of Stormwater Quality: The permittee shall periodically, (frequency shall be stated in SWP2 Plan, but at a minimum of once per year) perform and document a visual examination of a stormwater discharge associated with industrial activity from each identified stormwater outfall."

51. The EPA Inspection and corresponding records review confirmed that Respondent had failed to either conduct and/or document routine facility inspections, comprehensive annual site compliance evaluations, and annual visual examinations of stormwater discharges as required by the NPDES Permit.

52. The Respondent's failures to conduct and/or document routine facility inspections, comprehensive annual site compliance evaluations, and annual visual examinations of stormwater discharges are violations of the conditions and limitations of the Respondent's NPDES Permit.

Penalty

53. As alleged in the preceding Counts, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$25,847 per day for each day during which the violation continues, up to a maximum of \$323,081.

CONSENT AGREEMENT

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

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

56. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Complaint and Consent Agreement/Final Order.

57. 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.

58. Respondent and Complainant agree to conciliate 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 incurred as a result of this action.

59. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

60. 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.

61. Respondent certifies by the signing of this Consent Agreement/Final Order that Respondent's Site will return to compliance with Kansas' NPDES General Permit, number KSR000952, as well as Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations, through the terms and provisions set forth in the Administrative Order on Consent, filed contemporaneously with this Consent Agreement/Final Order.

Penalty Payment

62. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of One Hundred Forty-Four Thousand Five Hundred Dollars (\$144,500.00) 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 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

63. Respondent shall pay the penalty identified above 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-07-2023-0112 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

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

64. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to the following:

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

and

Sam Bennett
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

65. 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.

66. 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

67. Respondent's payment of the entire civil penalty 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 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.

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

69. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

70. 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 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.

71. 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

72. 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.

73. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 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.

74. The state of Kansas 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).

75. 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.

76. Respondent consents to service of this Consent Agreement/Final Order via electronic mail.

77. 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:

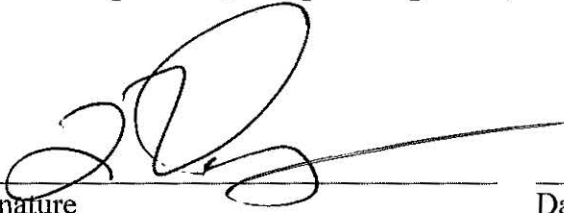
Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Sam Bennett
Office of Regional Counsel

For the Respondent, Scrap Management, LLC d/b/a Rivers Edge Scrap Management:


Signature _____ Date 1/24/24

Tim Kates
Name

President
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.

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 emailed to Respondent:

Matt Johnson
Scrap Management, LLC d/b/a Rivers Edge Scrap Management
mattj@kvco.net

Copy emailed to Attorney for Complainant:

Sam Bennett
U.S. Environmental Protection Agency Region 7
bennett.sam@epa.gov

Copy emailed to the Kansas Department of Health and Environment:

Shelly Shores-Miller
Kansas Department of Health and Environment
shelly.shores-miller@ks.gov

Date