

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PACIFIC HIDE & FUR D/B/A PACIFIC
STEEL AND RECYCLING

Lewiston, Idaho

Respondent.

DOCKET NO. CWA-10-2025-0148

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 \$27,378 per day for each day during which the violation continues, up to a maximum penalty of \$342,218. *See also* 90 Fed. Reg. 1375 (January 8, 2025) (2025 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 Pacific Hide and Fur D/B/A Pacific Steel and Recycling (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. EPA’S 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. Section 502(12) of the CWA, 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. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, chemical wastes, biological materials, rock, sand and industrial wastes.

3.5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

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

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

3.8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires an NPDES permit for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources associated with industrial activity and to establish a comprehensive program to regulate sources of storm water associated with industrial activity.

3.9. The phrase “storm water associated with industrial activity” is broadly defined to mean the discharge from any conveyance that is used for collecting and conveying storm water at an industrial plant. 40 C.F.R. § 122.26(b)(14). Facilities involved in scrap-recycling for metals, including facilities classified under Standard Industrial Classification (SIC) group 5093,

Scrap and Waste Materials, are defined as engaging in industrial activity. 40 C.F.R. § 122.26(b)(14)(vi).

3.10. EPA issued the NPDES general permit for stormwater discharges associated with industrial activity (2015 MSGP), which became effective for industrial activities in Idaho on August 12, 2015. The 2015 MSGP expired on June 4, 2020, and was administratively continued. The 2021 MSGP became effective on June 17, 2021.

3.11. Section 402(b) of the CWA authorizes EPA to delegate NPDES permitting authority to authorized states. 33 U.S.C. § 1342(b); 40 C.F.R. Part 123.

3.12. On June 5, 2018, EPA approved Idaho's application to administer the Idaho Pollutant Discharge Elimination System program in Idaho. 83 Fed. Reg. 27769 (June 14, 2018). Idaho assumed permitting and compliance authority for the NPDES program in phases. Stormwater permits, including the MSGP, were transferred on July 1, 2021. *Id.*

3.13. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), if a state NPDES program is approved pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the EPA retains the authority to take enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

3.14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

General Allegations

3.15. Respondent is a Montana domestic profit corporation, and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5). Respondent also does business as Pacific Steel and Recycling.

3.16. At all times relevant to this action Respondent owned and operated a scrap-recycling facility located at 604 12th Street North in Lewiston, Idaho (Facility). The primary operations at the Facility include scrap-recycling for metals; these operations are categorized under Standard Industrial Classification (SIC) group 5093 (Scrap and Waste Materials).

3.17. The Facility discharges stormwater from areas associated with industrial activity at the Facility from outfalls into the City of Lewiston’s stormwater conveyance system, which flows to the Clearwater River and then to the Snake River.

3.18. The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.19. The stormwater outfalls are “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.20. The Clearwater River contributes perennial and uninterrupted flow to the Snake River. The Snake River is a traditionally navigable water. The Clearwater River is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.21. Respondent discharged stormwater associated with industrial activity from the Facility into waters of the United States, within the meaning of Sections 402(p) and 502(7) of the CWA, 33 U.S.C. §§ 1342(p) and 1362(7), and as defined at 40 C.F.R. § 122.26(a)(14).

3.22. By discharging industrial stormwater from the Facility into waters of the United States, Respondent engaged in the “discharge of pollutants” from point sources within the

meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

Violations

3.23. On May 22, 2024, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent's compliance with the CWA and the 2015 MSGP and 2021 MSGP.

3.24. As described below, based on the EPA Inspector's observations and a review of Respondent's records, EPA alleges that between November of 2020 to at least November of 2024, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of the 2015 and 2021 MSGP. Violations of the 2015 MSGP and 2021 MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Failure to Adequately Conduct and Document Inspections and Visual Assessments

3.25. Paragraphs 3.1 through 3.24 are realleged and incorporated herein by reference.

3.26. Condition 3.1 of the 2015 MSGP requires the permittee to conduct quarterly facility inspections.

3.27. Respondent failed to conduct a routine inspection of the Facility during the first quarter of 2021 in violation of the 2015 MSGP.

3.28. Condition 3.1.4 of the 2021 MSGP requires the permittee to conduct one inspection annually where a discharge is occurring.

3.29. Respondent failed to conduct one inspection annually where a stormwater discharge was occurring in 2021 and 2023 in violation of the 2021 MSGP.

3.30. Condition 3.1.2 of the 2015 MSGP requires the permittee to describe the physical condition of outfalls in quarterly reports.

3.31. Respondent failed to describe the physical condition of outfalls in the November 2020 and April 2021 reports in violation of the 2015 MSGP.

3.32. Conditions 3.2.1 and 3.2.2 of the 2015 MSGP and 2021 MSGP require the permittee to conduct a visual assessment of each outfall.

3.33. Respondent failed to conduct a visual assessment of outfall 2 in Quarter 4 of 2020 in violation of the 2015 MSGP. Respondent failed to conduct quarterly visual assessments during Quarters 3 and 4 of 2021, Quarters 2 and 4 of 2022, Quarters 1, 2, 3, and 4 of 2023, and Quarter 3 of 2024 in violation of the 2021 MSGP.

3.34. Condition 3.1.6 in the 2021 MSGP requires inspection reports to include specific information, including inspection date, information regarding pollutants entering the stormwater system, and the physical condition of stormwater discharge points.

3.35. Respondent failed to include required information in its inspection reports in violation of the 2021 MSGP.

3.36. Condition 3.2.2 in the 2015 MSGP requires the permittee to document the visual assessment date and time for each sample for the quarterly visual assessment.

3.37. Respondent failed to document the visual assessment date and time for each sample for the quarterly visual assessment conducted in November of 2020 in violation of the 2015 MSGP.

Failure to Adequately Sample

3.38. Paragraphs 3.1 through 3.24 are realleged and incorporated herein by reference.

3.39. Conditions 4.1.3, 4.2.2.3, and 4.2.2.4 of the 2021 MSGP require sampling from all outfalls after a measurable storm event.

3.40. Respondent failed to conduct benchmark monitoring for Outfall 1 following a measurable storm event during six (6) quarters between 2021 and 2023 in violation of the 2021 MSGP.

3.41. Condition 4.2.2.1 of the 2021 MSGP and 40 C.F.R. Part 136 require samples to be preserved at a temperature less than or equal to six degrees Celsius (6 °C).

3.42. Respondent failed to preserve samples at the required temperature in Quarter 1 of 2022 and Quarter 3 of 2022 in violation of the 2021 MSGP.

Failure to Implement and Document Corrective Actions

3.43. Paragraphs 3.1 through 3.24 are realleged and incorporated herein by reference.

3.44. Conditions 4.1, 4.2, and 4.4 of the 2015 MSGP require the permittee to review and revise the Stormwater Pollution Prevention Plan (SWPPP) after observing visible pollution in samples collected during quarterly visual assessments.

3.45. Respondent failed to implement and document the corrective actions during the quarterly visual assessment conducted in Quarter 4 of 2020 in violation of the 2015 MSGP.

3.46. Conditions 3.2.2.5 and 5.1.1 in the 2021 MSGP require the permittee to document corrective actions taken when pollution is observed during quarterly visual assessments.

3.47. Respondent failed to document corrective actions were taken when pollution was observed during quarterly visual assessments in Quarter 1 of 2022 and Quarter 3 of 2022 in violation of the 2021 MSGP.

3.48. Condition 5.3.3 of the 2021 MSGP requires the permittee to document corrective actions taken when sampling shows exceedances of benchmark values and triggers additional implementation measures.

3.49. Respondent failed to document corrective actions in Quarter 1 of 2022 and Quarter 1 and Quarter 2 of 2024, in violation of the 2021 MSGP.

3.50. Condition 7.5 of the 2015 MSGP requires the permittee to describe noncompliance observed during the previous calendar year in an annual report.

3.51. Respondent failed to adequately document the noncompliance observed during 2020 in the 2020 annual report.

Failure to Maintain an Adequate Stormwater Pollution Prevention Plan

3.52. Paragraphs 3.1 through 3.24 are realleged and incorporated herein by reference.

3.53. Conditions 6.2.2.3, 6.2.3.4, 6.2.5.2, and 6.2.5.3 of the 2021 MSGP specify information that is required to be maintained in the Facility's SWPPP.

3.54. Respondent failed to maintain an adequate SWPPP in violation of the 2021 MSGP.

Failure to Post Permit Coverage

3.55. Paragraphs 3.1 through 3.24 are realleged and incorporated herein by reference.

3.56. Condition 1.3.5 of the 2021 MSGP requires the permittee to post permit coverage signage in an area visible from the public right-of-way.

3.57. Respondent failed to post permit coverage signage in an area visible from the public right-of-way in violation of the 2021 MSGP.

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 \$74,250 (Assessed Penalty).

4.4. Respondent consents to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agrees to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date).

4.5. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America’s Bank Account, Respondent shall pay using one of the electronic payments methods listed on EPA’s How to Make a Payment website and will not pay with a paper check.

4.6. When making a payment, Respondent shall:

4.6.1. Identify every payment with Respondent’s name and the docket number of this Agreement, CWA-10-2025-0148.

4.6.2. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of payment electronically to the following person(s):

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

Emily Siangkam
Compliance Officer
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
siangkam.emily@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

4.7. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

4.7.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other

charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C.

§ 1319(g)(9). The rate of interest is the IRS standard underpayment rate.

4.7.2. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

4.7.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.8. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.8.2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

4.8.3. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

4.8.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.9. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

4.10. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

4.11. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (Fines, Penalties, and Other Amounts) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with the law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

4.11.1. Respondent shall complete an IRS Form W-9 (Request for Taxpayer Identification Number and Certification), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.

4.11.2. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

4.11.3. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

4.11.4. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

4.12. 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.

4.13. 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.

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

4.15. 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. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

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

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

DATED:

FOR RESPONDENT:

Kirby Farner
HSET Director
Pacific Hide and Fur
D/B/A Pacific Steel and Recycling

FOR COMPLAINANT:

Edward J. Kowalski
Director
Enforcement and Compliance Assurance Division
EPA Region 10