

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No.
)	
L.P. Gill, Inc.)	CWA-07-2025-0219
)	
Respondent)	Consent Agreement And
)	Final Order
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

Complaint
Preliminary Statement

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, L.P. Gill, Inc., ("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 Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated its National Pollutant Discharge Elimination System ("NPDES") permit promulgated issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

4. The authority to act 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 L.P. Gill, Inc., is and was at all relevant times incorporated under the laws of the state of Nebraska.

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 only in accordance with the terms of an 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, including the territorial seas.”

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 Section 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)(v) defines “industrial activity” as including “Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA.”

13. The Nebraska Department of Water, Environment and Energy (“NDWEE”) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

EPA's General Allegations

14. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and includes but is not limited to an individual, corporation, and partnership.

15. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the facility at 1402 Highway 20, Jackson, Nebraska, 68743 operating under SIC code 4953 (hereinafter the "facility"). Respondent operates a Municipal Solid Waste ("MSW") landfill which includes the landfilling of waste from local haulers and transfer stations.

16. Stormwater, snow melt, surface drainage, and runoff water leaves Respondent's facility and discharges into Elk Creek, a perennial water body with year-round flow. The Elk Creek flows into the Missouri River which is a "traditionally navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The runoff and drainage from the facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

17. The facility 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).

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

19. The Elk Creek and the Missouri River are both "waters of the United States" as is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

20. Stormwater runoff from Respondent's industrial activity at the facility 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).

21. 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.

22. NDWEE implemented NPDES Industrial Stormwater General Permit NER920000 for the discharge of stormwater under the NPDES, on September 27, 2022. The permit governs stormwater discharges associated with industrial activity. Respondent applied for and was issued NPDES Permit Authorization #ISW- 202201040 for coverage under the general permit described above, which will expire on March 31, 2027, for the facility.

23. Respondent operated under the referenced Permit at all times relevant to this Order.

24. On November 6 and 7, 2024, the EPA performed an Industrial Stormwater Compliance Evaluation 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 its NPDES permit

and the CWA. During this inspection, EPA's Inspector identified several violations of the Respondent's NPDES permit. EPA issued a Notice of Preliminary Findings to L.P. Gill, Inc., on November 7, 2024.

EPA's Allegations of Violation

Count 1

**Failure to Conduct and Follow-Up Effluent Limitation
Monitoring**

25. NPDES Permit NER920000 Section 6 requires Respondent to collect and analyze storm water samples and document monitoring activities consistent with the procedures described in Part 6 and Appendix A, and any additional sector-specific requirements in Part 8.

26. NPDES Permit NER920000 Section 6.2.3.1., Monitoring Based on Effluent Limitation Guidelines. Table 6-2 identifies the stormwater discharges subject to effluent limitation guidelines. An exceedance of the effluent limitation is a permit violation. Beginning in the first full quarter following Respondent's date of discharge authorization, Respondent must monitor once per year at each storm water discharge point containing the discharges identified in Table 6-2 for the parameters specified in the sector-specific section of part 8.

27. NPDES Permit NER920000 Section 6.2.3.3., Follow-up Actions if Discharge Exceeds Numeric Effluent Limitation states that if any monitoring value exceeds a numeric effluent limitation contained in the permit, Respondent must submit a report to the Department consistent with Part 7.3. Respondent must monitor, at least quarterly, until the storm water discharge is in compliance with the effluent limit or until the Department waives the requirement for additional monitoring.

28. NPDES Permit NER920000 Part 8, Subpart L applies to storm water discharges associated with industrial activity from Landfills, Land Application Sites, and Open Dumps as identified by the Activity Code specified under Sector L in Table D-1 of Appendix D of the permit.

29. NPDES Permit NER920000 Part 8.L.10., Effluent Limitations Based on Effluent Limitations Guidelines, Table 8.L-2, identifies effluent limitations that apply to the industrial activities as described. Compliance with these effluent limitations is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit. Specific limitations are listed below.

Table 8.L-2 ¹		
Industrial Activity	Parameter	Effluent Limitation
Discharges from non-hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart B (see footnote).	Biochemical Oxygen Demand (BOD ₅)	140 mg/L, daily maximum
		37 mg/L, monthly average
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly average
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly average
	Alpha Terpineol	0.033 mg/L, daily maximum
		0.016 mg/L, monthly average
	Benzoic Acid	0.12 mg/L, daily maximum
		0.071 mg/L, monthly average
	p-Cresol	0.025 mg/L, daily maximum
		0.014 mg/L, monthly average
	Phenol	0.026 mg/L, daily maximum
		0.015 mg/L, monthly average
	Total Zinc	0.20 mg/L, daily maximum
		0.11mg/L, monthly average
	pH	6.0 – 9.0 S.U.

30. The EPA Inspection revealed that Respondent failed to conduct the 2023 annual effluent monitoring for the parameters Alpha Terpineol, Benzoic Acid, p-Cresol, and Phenol.

31. The EPA Inspection revealed that Respondent failed to report the following exceeded effluent monitoring parameters:

- Quarter 4, 2022 the TSS effluent monitoring exceeds the monthly and daily limitations at 498 mg/L.
- Quarter 2, 2023 the BOD effluent monitoring exceeds the monthly limitation at 69 mg/L.
- Quarter 2, 2023 the TSS effluent monitoring exceeds the daily and monthly limitation at 298 mg/L.
- Quarter 3, 2023 the TSS effluent monitoring exceeds the monthly limitation at 31 mg/L.

32. Respondent's failure to conduct effluent limitation monitoring and failure to follow-up is a violation of the terms and conditions of Respondent's NPDES permit and the CWA.

CONSENT AGREEMENT

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

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

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

36. 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.

37. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and 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.

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

39. Respondent understands and agrees that this Consent Agreement and 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 and Final Order.

40. Respondent certifies by the signing of this Consent Agreement and Final Order that Respondent's Facility have returned to compliance with Nebraska General Permit, number NER920000, the CWA, and applicable regulations.

41. 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 \$27,378 per day for each day during which the violation continues, up to a maximum of \$342,218.

42. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$32,597.

43. Respondent agrees to pay a civil penalty in the amount of \$32,597 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

Penalty Payment

44. 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>.

When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-07-2025-0219,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Amy Gonzales
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
R7_Hearing_Clerk_Filings@epa.gov

and

Kristina Gonzales
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219
gonzales.kristina@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, a copy of the check, 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.

45. 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:

- a. 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.

- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

46. 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 Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

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

47. 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.

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

- a. 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 a 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. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.

- i. 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>
 - ii. Respondent shall 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;
 - iii. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at sherrer.dana@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. The EPA recommends encrypting IRS Form W-9 email correspondence; and
- b. 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 then Respondent shall provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email with Respondent's TIN within 5 days of Respondent's receipt of a TIN issued by the IRS.

Effect of Settlement and Reservation of Rights

49. Respondent's payment of the entire penalty pursuant to this Consent Agreement and Final Order 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 Consent Agreement and 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.

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

51. Nothing contained in this Consent Agreement and 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.

52. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative 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.

53. With respect to matters not addressed in this Consent Agreement and 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

54. The Parties acknowledge that this Consent Agreement and 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.

55. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and 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 and Final Order.

56. The state of Nebraska 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).

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

58. Respondent consents to service of this Consent Agreement and Final Order via electronic mail.

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

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

David Cozad
Director
Enforcement and Compliance Assurance Division

Kristina Gonzales
Office of Regional Counsel

For the Respondent, L.P. Gill, Inc.:

A handwritten signature in blue ink, appearing to read "John M. Perkey", written over a horizontal line.

Signature

9/3/25

Date

John M. Perkey

Name

Vice President, Deputy General Counsel

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 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 Consent Agreement and Final Order was sent this day by electronic mail to the following:

Representatives for Respondent:

John Perkey
Waste Connections
Vice President, Deputy General Counsel – Compliance and Government Affairs
John.Perkey@WasteConnections.com

For Complainant, U.S. Environmental Protection Agency Region 7:

Nichols.beckett@epa.gov
Beckett Nichols, Enforcement and Compliance Assurance Division

gonzales.kristina@epa.gov
Kristina Gonzales, Office of Regional Counsel

For Nebraska Department of Water, Energy, and Environment

Phillip Halsted
phillip.halsted@nebraska.gov

Date

Signature