

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

IN THE MATTER OF) Docket No. CWA 07-2015-0048
)
Pink Hill Acres, Inc.)
)
)
)
) COMPLAINT AND CONSENT
) AGREEMENT / FINAL ORDER
)
Proceedings under Section 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This Administrative Complaint (“Complaint”) has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), pursuant to Section 309(g) of 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) alleges that the Respondent discharged pollutants into the waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, is the Director of Region 7’s Water, Wetlands and Pesticides Division.

4. Pink Hill Acres, Inc. (hereafter “Respondent” or “Pink Hill”), is and was at all relevant times a corporation under the laws of and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

5. 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.

6. 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.

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 a 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(a)(14)(vi) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities involved in recycling of materials, including demolition debris, which are classified as Standard Industrial Classification 4953 (Landfill).

11. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

EPA’s General Allegations

12. Respondent is a person as that term is defined in as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondent is and was at all times relevant to this action the owner and/or operator of a facility operating under the name Pink Hill Acres Construction and Demolition Landfill, located at 3500 Northwest Highway 7, Blue Springs, MO 64014 (“Facility”), operating under

SIC code 4953.

14. Stormwater, snow melt, surface drainage and runoff water leave Respondent's Facility and discharge to the West Fire Prairie Creek. The runoff and drainage from Respondent's Facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

16. The Facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The West Fire Prairie Creek is a "water of the United States" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation, 40 C.F.R. § 122.2.

18. Stormwater runoff from Respondent's industrial activity results in the addition of pollutants from a point source to waters of the United States, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

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

20. MDNR issued NPDES Permit No. MO-0129810 to Pink Hill for discharges from its facility to West Fire Prairie Creek. The NPDES permit became effective August 28, 2009, and expired August 27, 2014. The permit was administratively continued by MDNR until it was reissued February 1, 2015, expiring March 31, 2019.

21. Respondent's NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES permit as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permit.

22. Respondent's 2009 NPDES permit sets effluent limitations at Outfall 001 for pollutants, including Five-day Biological Oxygen Demand ("BOD5"), Chemical Oxygen Demand ("COD"), Total Suspended Solids ("TSS"), Settleable Solids, Chloride + Sulfate, Chloride, Aluminum, Copper, Iron, Selenium, Zinc, and pH, and requires quarterly monitoring for these parameters.

23. Respondent has operated under the Permit at all times relevant to this Complaint.

24. On November 4 and 6, 2013, EPA performed an Industrial Stormwater Compliance

Evaluation Inspection (hereafter “the 2013 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.

25. During the Inspection, the EPA inspector reviewed Respondent’s records related to the NPDES permit and observed the facility and the receiving stream to which stormwater is discharged.

26. At the time of the Inspection, Respondent had in place two Storm Water Pollution Prevention Plans (“SWPPP”) dated September 2009 and June 2012, copies of which were provided to the EPA inspector.

27. During the EPA inspection , the inspector collected stormwater samples of the Facility’s stormwater effluent, reviewed the Facility’s records related to the NPDES permit, and observed the site and the receiving stream to which Outfalls 001 – 004 discharge.

28. On August 25, 2014, EPA issued Respondent a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, in order to further evaluate the Facility’s compliance with its NPDES permit and the CWA. The Facility submitted a response to the Request for Information on September 10, 2014, October 9, 2014, November 11, 2014, December 15, 2014 and January 20, 2015.

29. According to the Discharge Monitoring Reports (DMR) submitted by the Facility, Respondent has discharged stormwater to West Fire Prairie Creek between June 2010 and October 2014 that exceeded the effluent limitations as prescribed in the Pink Hill’s NPDES permit, as further identified below.

30. EPA finds that each discharge is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, and as such is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Allegations of Violation

Count One
(Effluent Limit Violations)

31. The facts stated in Paragraphs 12 through 30, above, are herein incorporated.

32. Pink Hill's 2009 permit contained effluent limitations for Aluminum, BOD, COD, Chloride, Iron, pH, Selenium and TSS. The 2015 permit contains effluent limits for BOD, COD, TSS, Chloride + Sulfate, pH, Iron, Selenium, and Zinc as well as benchmark limits for conductivity, oil & grease, ammonia and several metals. According to the DMRs Pink Hill submitted to MDNR, Pink Hill discharged stormwater with parameters above the effluent limits set forth in its 2009 NPDES permit for the above referenced pollutants on the following occasions between June 2010 and October 2014:

- a. *Aluminum*: Stormwater exceeded the monthly average concentration limits eight times, and the daily maximum concentration limits eight times which occurred during the same rainfall events;
- b. *COD*: Stormwater exceeded the monthly average concentration limits two times;
- c. *Chloride + Sulfate*: Stormwater exceeded the daily maximum concentration limits two times;
- d. *Iron*: Stormwater exceeded the quarterly average concentration limits eight times, and the daily maximum concentration limits six times which occurred during the same rainfall events;
- e. *pH*: Stormwater exceeded the minimum limit one time;
- f. *Selenium*: Stormwater exceeded the monthly average concentration limits four times, and the daily maximum concentration limits three times;
- g. *TSS*: Stormwater exceeded the monthly average concentration limits twice, and the daily maximum concentration limits once; and
- h. *Zinc*: Stormwater exceeded the monthly average concentration limits two times, and the daily maximum concentration limits two times.

33. The EPA finds that each of Respondent's violations described in Paragraphs 32, above, is a violation of the terms and conditions of its 2009 NPDES permit issued pursuant to

402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count Two
(Ineffective Best Management Practices)

34. The facts alleged in paragraphs 12 through 30, above, are herein incorporated.

35. Respondent's 2009 Permit requires that Respondent "provide sediment and erosion control sufficient to prevent or control sediment loss off of the property. This could include the use of straw bales, silt fences, or sedimentation basins, if needed, to comply with effluent limits." Respondent's permit further states that the purpose of the BMPs "is the prevention of pollution of waters of the state. A deficiency of a BMP means it was not effective in preventing pollution (10 CSR 20-2.010(56)) of waters of the state"

36. During the EPA inspection, Respondent's stormwater sedimentation basin was determined to be ineffective as evidenced by the level of turbidity of the stormwater that discharged from the basin and the numerous effluent limit violations set forth above.

37. The EPA finds that each of Respondent's violations described in Paragraphs 35-36, above, is a violation of the terms and conditions of its NPDES permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

38. Respondent admits the jurisdictional allegations of this Complaint and 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 the Final Order.

39. Respondent neither admits nor denies the factual allegations contained in this Complaint and CA/FO.

40. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal this CA/FO.

41. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

42. This CA/FO addresses all civil and administrative claims for the CWA violations identified above and existing through the effective date of this CA/FO. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law. EPA further reserves the right to take enforcement action against Respondent for any future

violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

43. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251 et seq., and all regulations promulgated there under.

44. The effect of settlement described in Paragraph 42, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 43, above, of this CA/FO.

45. The Final Order shall be entered and become effective only after the conclusion of the period of 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.

46. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

47. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

48. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000)..

49. Respondent understands that its failure to timely pay the civil penalty stated above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

50. The undersigned representative(s) of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

51. Respondent agrees that the original CA/FO signed by Respondent shall be transmitted to Elizabeth Huston, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Penalty Payment

52. Respondent shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000), which includes interest. Respondent shall pay this civil penalty in three equal monthly installment payments of Five Thousand Dollars (\$5,000). The first installment payment shall be paid within thirty (30) days of the effective date of the Final Order. The second monthly installment payment shall be paid within sixty (60) days after the effective date of the Final Order. The third monthly installment payment shall be paid within ninety (90) days after the effective date of the Final Order. Payments shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payments shall reference docket number CWA-07-2015-0048.

53. A copy of the check should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Elizabeth Huston
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

54. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Supplemental Environmental Project (SEP)

55. Respondent shall expend a minimum of \$30,000 (Total SEP Expenditure) in approvable costs for the purposes of improving stormwater quality by converting impervious surfaces,

including an asphalt parking lot and adjacent concrete side walk and steps, located at 8100 Ozark Road, KCMO into green space. Specifically, this project will include: (1) the removal and recycling of approximately 450 tons of asphalt, and removal of approximately 1,000 square feet of concrete; (2) the proper handling and disposal of material; and (3) the re-grading and seeding of approximately 7,000 square feet with native grasses. This specific project is part of a larger sustainable reuse plan in the area that has included the demolition of a correctional facility and the creation of a community garden.

56. Respondent shall provide notice of completion that includes a detailed description of the SEP, certification that the SEP has been implemented in accordance with this CAFO, and an itemized list of costs along with documentation of the costs incurred by Respondent to EPA upon completion of the SEP. The costs shall be certified as accurate by the Respondent.

57. Upon receipt of the notice of completion, EPA will evaluate the cost documentation provided by Respondent and make a determination as to the sum of the approvable costs incurred by the Respondent. This determination shall be within the sole discretion of the EPA, but approved costs shall include costs incurred for leasing equipment, purchasing material, and reasonable employee compensation for the work set forth above. Upon satisfactory completion of the SEP, EPA will provide Respondent with written notification that the SEP has been completed.

58. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

59. Any public statement in print, film or other communications media, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

Stipulated Penalties for Non-Performance of SEP

60. In the event Respondent fails to satisfactorily complete the SEP the Respondent shall pay a stipulated penalty not to exceed \$24,000. Failure to complete the SEP by January 15, 2016 will result in a stipulated penalty of \$24,000. However, the parties agree that EPA may

extend the completion date. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$24,000 that shall be based upon a pro-rata share of the costs incurred to implement the SEP in relation to the portion of the penalty mitigated by the SEP (i.e., \$24,000 multiplied by the percentage of unexpended costs in relation to the Total SEP Expenditures).

61. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

62. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The payment shall be in accordance with the provisions of Paragraph 52.

Parties Bound

63. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

Reservation of Rights

64. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

65. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

66. This Order shall be entered and become effective only after the conclusion of the period of 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flourney
Director
Water, Wetlands and Pesticides Division

Date

Elizabeth Huston
Assistant Regional Counsel

Date

FOR RESPONDENT:
Pink Hill Acres, Inc.:

W. S. Sam
Name

8/10/15
Date

General Manager
Title

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____ 2015, I hand-delivered the original of the foregoing Complaint and Consent Agreement and Final Order with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; a true and correct copy of the same was sent by first class mail on the ___ day of _____ 2015, to Pink Hill Acres Inc., 2501 Manchester Trafficway, Blue Springs, MO 64139.

Name