

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2015-0101
David Cozad)	
Michael Schumacher)	
Brad Peterson)	
)	
d/b/a Credit Island Recycling)	
)	CONSENT AGREEMENT AND
Respondents)	FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

The United States Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and David Cozad, Michael Schumacher and Brad Peterson (“Respondents”), doing business as Credit Island Recycling, 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) of 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 (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). This is a “Class I” penalty action pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. 1319(g)(2)(A). This Consent Agreement and 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.

A. ALLEGATIONS

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, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (“CA/FO”) serves as notice that EPA has reason to believe that Respondents have violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

4. Respondents in this case are David Cozad, Michael Schumacher, and Brad Peterson, d/b/a Credit Island Recycling (“Respondents”).

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(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified as Standard Industrial Classification 5093 (Scrap and Waste Materials).

11. The Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. IDNR issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity. The most recent 5-year permit has an effective date of October 1, 2012, and an expiration date of October 1, 2017.

13. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent (NOI) to IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1 of the General Permit, a Stormwater Pollution Prevention Plan (SWPPP), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site before the NOI is submitted to IDNR and fully implemented concurrently with operations at the facility.

Factual Allegations

14. Respondents were and at all times relevant to this action the owners and/or operators of a facility known as Credit Island Recycling, located at 2260 West River Drive, Davenport, Iowa 52802 (Facility), operating under SIC code 5093.

15. Stormwater, snow melt, surface drainage and runoff water leave Respondents' facility and discharge to a tributary to the Mississippi River and thereafter to the Mississippi River. The runoff and drainage from Respondents' facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

17. 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).

18. Stormwater runoff from Respondents' industrial activity 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).

19. Respondents' 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. The Mississippi River and the tributary of the Mississippi River, referenced in

Paragraph 15, are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2, and 33 C.F.R. Part 328. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, inter alia, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.

21. On May 13, 2014, EPA personnel conducted an inspection of the Facility. During the inspection, EPA observed that the tributary to the Mississippi River flows east to the Mississippi River. The Mississippi River is a traditional navigable water.

22. The tributary of the Mississippi River has a bed, banks, and an ordinary high water mark and has been identified as an intermittent stream by the U.S. Geological Survey, is a tributary of the traditionally navigable Mississippi River, and is a water of the United States, as defined in 40 C.F.R. § 122.2.

23. On January 4, 2013, the IDNR staff performed a compliance investigation of the Facility (IDNR 2013 Investigation), following a citizen’s complaint that “a big pile of appliances was at the new scrap yard and that demanufacturing was taking place without a permit”. At this time, the facility was informed by IDNR staff that an industrial stormwater permit was required for the Facility.

24. By correspondence dated March 1, 2013, Respondents submitted a Notice of Intent to IDNR which certified a SWPPP had been developed for the facility and that requested coverage by NPDES General Permit No. 1. On March 8, 2013, IDNR issued Permit Authorization No. IA-23124-22882 (hereafter “Permit Authorization”) to Credit Island Recycling. Permit authorization extends from March 8, 2013, through October 1, 2017. This Permit Authorization governs stormwater discharges at the Facility associated with industrial activity.

25. Prior to issuance of the Permit Authorization (March 8, 2013), Respondents owned and/or operated the facility without the required authorization under an industrial stormwater NPDES Permit.

26. On July 30, 2013, October 30, 2013, and November 7, 2013, IDNR staff conducted inspections of the facility in response to citizen complaints and to determine the facility’s compliance with Iowa’s Solid Waste program. During each of these inspections, IDNR documented ongoing scrapping activity at the facility.

27. On May 13, 2014, the EPA performed an inspection of the Facility (EPA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the EPA Inspection was to evaluate the Facility’s compliance with the CWA, including its management of

industrial stormwater at the Facility. The inspector observed and documented the following physical conditions at the Facility:

- a. a tributary to the Mississippi River is located directly adjacent to the Facility and had discharge points for the discharge of stormwater;
- b. scrap and recyclable material (metals) and solid waste had been pushed over an earthen berm and a construction fence along the Facility's eastern perimeter and had been pushed, placed, or allowed to fall into a tributary to the Mississippi River;
- c. the Facility was being maintained in an unclean and unorganized manner and that materials were scattered around the Facility grounds and were stockpiled in an unorganized manner;
- d. floatable materials were deposited in the tributary to the Mississippi River; and
- e. a pool of water with an oil sheen was present directly adjacent to a discharge pipe to the tributary to the Mississippi River.

28. During the EPA Inspection, the EPA inspector observed and documented that Respondents had failed to comply with the requirements of the General Permit No. 1, including, but not limited to, the following:

- a. conducting preventative maintenance of stormwater management devices;
- b. good housekeeping practices;
- c. employee training, evaluation and certification for the presence of non-stormwater discharges; and
- d. conducting visual inspections.

29. Following EPA's inspection, the EPA inspector issued a Notice of Potential Violation (NOPV) to Respondents that identified violations of Respondents' authorization under General Permit No.1, including but not limited to:

- a. failure to provide a SWPPP;
- b. failure to document visual self-inspections of stormwater runoff, and
- c. failure to implement best management practices to prevent recycled materials from entering a waterway.

30. In telephone interviews with representatives of Credit Island Recycling in September 2014, EPA was informed that the Facility did not yet have a SWPPP, and that site conditions have "gotten worse" and that there are "hundreds of appliances stacked on their sides" and when vehicles are brought in the "fluids are not drained."

Alleged Violations

Count 1

Failure to Develop and Implement a SWPPP

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

32. Part III.C. of General Permit No. 1, as authorized and applicable to the Facility, requires that a storm water pollution prevention plan (SWPPP) be developed for the facility covered by the General Permit, and that the SWPPP shall be prepared in accordance with good engineering practices. The plan is required to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility; and to describe and ensure the implementation of practices which will be used to reduce pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Subject facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of the permit.

33. Part III.C.1. of General Permit No. 1, as authorized and applicable to the Facility, requires that the SWPPP shall be completed before the Notice of Intent is submitted to the IDNR. Full implementation of the pollution prevention plan is required to be executed concurrently with operations at the subject facility.

34. Through at least September 2014, Respondents had failed to develop and implement a SWPPP for the Facility, in violation of Part III.C.1 of General Permit No. 1.

35. Respondents' failure to develop and implement a SWPPP is a violation of the terms and conditions of General Permit No. 1, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Failure to Conduct Visual Inspections

36. The allegations stated in Paragraphs 1 through 30, above, are re-alleged and incorporated herein by reference.

37. Part III.C.4.C of General Permit No. 1, as authorized and applicable to the Facility, requires that qualified personnel visually inspect designated equipment and plant area at appropriate intervals specified in the SWPPP, but in no case, not less than once a year.

38. Through at least the date of EPA's Inspection, Respondents had failed to perform inspections at the Facility, in violation of Part III.C.4.C of General Permit No. 1.

39. Respondents' failure to conduct inspections at the Facility are violations of the terms and conditions of General Permit No. 1, as authorized and applicable to the Facility, and are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3
Discharges of Non-Stormwater Pollutants

40. The allegations stated in Paragraphs 1 through 30, above are re-alleged and incorporated herein by reference.

41. Part III.A. of General Permit No. 1, as authorized and applicable to the Facility, states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water."

42. The EPA Inspection, referenced in Paragraphs 27 - 28, above, documented discharges of non-stormwater pollutants in violation of the General Permit, including but not limited to, the discharge of recyclable material, petroleum related products, and other debris into the tributary adjacent to the Facility, which flows directly into the Mississippi River.

43. The discharges of non-stormwater pollutants, as observed and documented by EPA's Inspection, are violations of the terms and conditions of General Permit No. 1, as authorized and applicable to the Facility, and are violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and 33 U.S.C. § 1342(p).

B. CONSENT AGREEMENT

1. Respondents and EPA agree to the terms of this CA/FO and Respondents agree to comply with the terms of the Final Order portion of this CA/FO.

2. Respondents admit the jurisdictional allegations of this CA/FO and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

3. Respondents neither admit nor deny the factual allegations and legal conclusions set forth above.

4. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above, and their right to appeal the Final Order portion of this CA/FO.

5. Respondents and Complainant agree to conciliate the matters set forth in this CA/FO 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.

6. Each undersigned representative of Respondents certify that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondents to it.

7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect each Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. This CA/FO addresses all civil and administrative claims for CWA violations during the Period of Violation that are specifically alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

9. Respondents certify by the signing of this CA/FO that to the best of each Respondent's knowledge, the Facility is in compliance with Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

10. The effect of the settlement described in Paragraph B.8 above is conditional upon the accuracy of Respondents' representations to EPA, as memorialized in Paragraph B.9 of this CA/FO.

11. Respondents agree that, in settlement of the claims alleged in this CA/FO, Respondents shall pay a penalty of \$5,000, as set forth in Paragraphs B.13 and B.14, below.

12. Respondents understand that failure to pay any portion of the civil penalty on the proper due date may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Payment Procedures

13. Respondents shall pay a mitigated civil penalty of \$5,000 within thirty (30) days of the effective date of the Final Order.

14. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

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

This payment shall reference docket number CWA-07-2015-0101.

Copies of the check shall be mailed to:

Howard Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

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

15. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CA/FO shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

Parties Bound

16. The Final Order portion of this CA/FO shall apply to and be binding upon Respondents and Respondents' agents, successors, or assigns. Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this CA/FO.

General Provisions

17. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

18. Complainant reserves the right to take enforcement action against Respondents for any future violations of CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

19. 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 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.

20. Respondents and Complainant shall bear their respective costs and attorney's fees.
21. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
22. Respondents and Complainant agree that this CA/FO can be signed in part and counterpart.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
DAVID COZAD

9-9-15
Date



Name (Print) DAVID COZAD

Title Property owner

RESPONDENT:
BRAD PETERSON

09-01-2015
Date



Name (Print) Brad Peterson

Title _____

RESPONDENT:
MICHAEL SCHUMACHER

9-11-15
Date

Michael

Name (Print) Michael Schumacher

Title Member

C. 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.

The Respondents are 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 Boromeo
Regional Judicial Officer