

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2016-0034
Acme Foundry, Inc.	)	
Coffeyville, Kansas	)	COMPLAINT AND
Respondent	)	CONSENT AGREEMENT/
	)	FINAL ORDER
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
_____	)	

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 ("EPA") and Respondent, Acme Foundry, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent, Acme Foundry, Inc., have violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

**Parties**

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

5. Acme Foundry, Inc., referred to as "Respondent", is and was at all relevant times a corporation under the laws of the State of Kansas.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The CWA prohibits the “discharge” of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

### **Stormwater**

8. 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.

9. 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.

10. 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.

11. 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 33, which includes establishments primarily engaged in primary metals. *See* 40 C.F.R. § 122.26(b)(14)(ii).

12. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The KDHE issued the Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) on September 1, 2006, which governs stormwater discharges associated with industrial activity for categories of facilities generally involved in materials handling, manufacturing, transportation, or production. The KDHE reissued the General Permit in 2011, which is effective from November 1, 2011, through October 31, 2016.

14. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to the KDHE.

15. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention (“SWP2”) plan. The SWP2 plan must contain certain items which are specified in the General Permit, and the SWP2 plan must specify the Best Management Practices (“BMPs”) (structural, non-structural, and managerial/administrative) to be employed and what controls will be implemented to minimize the contamination of stormwater runoff associated with industrial activity from the site.

**EPA’s General Allegations**

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

17. Respondent is and was at all times relevant to this action the owner and operator of a gray and ductile iron foundry (“facility” or “site”), operating under SIC code 3321, comprised of approximately eleven acres located at 1502 South Spruce Street in Coffeyville, Kansas 67337.

18. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s site and discharge to an unnamed tributary, then to the Verdigris River.

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

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

21. The Verdigris River and its tributaries identified in Paragraph 18, above, are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. Stormwater runoff from Respondent’ 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).

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

24. Respondent filed a NOI with the KDHE seeking coverage under the General Permit on or about October 27, 2006.

25. The KDHE issued NPDES General Permit No. KS-R000038 (“Permit”) to Acme Foundry on October 28, 2008. The KDHE re-issued the NPDES permit on October 12, 2011,

and it will expire on October 31, 2016. The Permit governs Respondent's stormwater discharges that are associated with industrial activity at the site.

26. On March 19, 2015, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its Permit and the CWA. A Notice of Potential Violation was issued at the conclusion of the inspection. A copy of the Inspection report was sent to Respondent by letter dated June 16, 2015, which identified potential violations including those described below.

### **EPA's Specific Allegations**

#### **Count 1 Unauthorized Discharge**

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

28. Section 1.1 of Respondent's Permit, Permit Area and Discharges Covered, authorizes both new and existing point source discharges of stormwater runoff associated with industrial activity to waters of the State of Kansas. Section 1.4 of Respondent's Permit, Discharges Not Covered by this Permit, specifically states, in pertinent part, that the permit does not authorize the discharge of sewage, pollutants or wastewaters.

29. During the EPA Inspection, the inspector observed discharge from Outfall 001 that was black in color. The inspector observed that stormwater passed through the waste sand storage pile and other areas of the site with poor housekeeping before exiting through Outfall 001.

30. Respondent's alleged discharge that contained pollutants and was not comprised entirely of stormwater was a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

#### **Count 2 Failure to Develop and Update an Adequate SWP2 Plan**

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

32. Section 2.1 of Respondent's Permit requires development of a SWP2 plan that is specific to the industrial activity and site characteristics occurring at the permitted location described in the NOI. Section 2.1 of the Permit further requires full implementation of the SWP2 plan within ten (10) months of permit authorization and periodical review, and update as necessary, the provisions of their SWP2 Plan, as required under the general permit.

33. Section 2.4.1 of Respondent's Permit requires that specific individuals or positions be identified within the facility organization as members of a Stormwater Pollution Prevention Team who are responsible for developing, implementing, maintaining and revising the plan. Each member's responsibilities shall be clearly identified in the plan. The activities and responsibilities of the team must address all aspects of the facility's SWP2.

34. Section 2.4.2.b. of Respondent's Permit requires the SWP2 to contain a site map identifying, among other features, the location of significant structures; the outlined drainage areas, direction of flow, approximate acreage of each stormwater outfall; stormwater conveyances and area inlets for each outfall.

35. Section 2.4.6. of Respondent's Permit requires the SWP2 to be re-evaluated and modified in a timely manner, but in no case later than ninety (90) days after certain events or receipt of information. Events or information which may require revision of the SWP2 include, but are not limited to, a change in the design, construction operation or maintenance of the facility that has a significant effect on the potential to discharge pollutants; and results from a visual inspection or stormwater monitoring that indicate the plan is ineffective.

36. Respondent's SWP2 identifies Outfalls 001 and 002 in Section 1.3, page 3, and on site maps attached to the SWP2 as Appendix A, Figure 3. The SWP2 includes a list of SWP2 team member responsibilities in Section 2.0 and lists specific members of the team in Appendix C, Table 1.

37. Based on observations and information collected from the EPA Inspection and review of Respondent's SWP2 plan, Respondent failed to prepare an adequate SWP2 plan and/or amend the SWP2 plan after there was a change in design, construction, operation or maintenance at the Facility that had an impact on the potential to discharge pollutants or when controls were determined to be ineffective, as follows:

- a. The SWP2 plan failed to identify the current employees within the organization that are members of the team responsible for developing, implementing, maintaining and revising the SWP2; and
- b. Despite completion of quarterly outfall inspection worksheets dated September 14, 2012, and June 2, September 16 and November 3, 2014, indicating that discharges from Outfall 001 were black and/or murky, and thus, that the controls were ineffective, Respondent failed to amend the SWP2 plan.

38. Respondent's alleged failure to develop and update, as appropriate, an adequate SWP2 plan is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 3  
Failure to Implement Measures and Controls**

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

40. Sections 2.2 and 2.4.3 of the of Respondent's Permit requires the Respondent to review, evaluate, select, install, utilize, operate and maintain best management practices ("BMPs") in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility. At a minimum, Respondent's plan for BMPs must contain a listing and description of managerial/administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility, including a schedule, if necessary, for implementing such controls. Specific measures and controls identified in the permit include, but are not limited to, good housekeeping, preventative maintenance, sediment and erosion controls and management of runoff.

41. Section 4.1 of Respondent's Permit requires proper operation and maintenance, at all times, of all facilities and systems of treatment and control which are installed or used to achieve compliance with the requirements of the Permit.

42. During the EPA Inspection, the inspector observed that the Respondent had failed to implement and/or operate and maintain stormwater measures and controls, including the following:

- a. Non-stormwater runoff offsite and discharges of non-stormwater indicating adequate BMPs were not installed and maintained;
- b. Significant ground discoloration and black coke throughout the facility and especially at the southwest corner near Outfall 002; and
- c. Improper storage of old parts, mishandling of spills, and evidence of floatables in the surface runoff pathway.

43. Respondent's alleged failure to properly operate and maintain adequate measures and controls to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 4  
Failure to Perform Facility Inspections**

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



45. Section 2.4.3(d) of Respondent's NPDES permit, regarding facility inspections, requires identification of personnel trained to inspect at appropriate intervals designated equipment and storage areas for raw material, finished product, chemicals, recycling, equipment, paint, fueling and maintenance; and areas for loading, unloading, and waste management areas. Inspection frequency shall be stated in the SWP2 Plan, but at a minimum, quarterly inspections shall be performed and a set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections, with records maintained of inspections and corrective actions.

46. Section 4.2.5 of Respondent's SWP2, page 17, addresses the procedures for facility inspections, as required by the Permit.

47. During the EPA Inspection, the inspector noted the Respondent had neither conducted nor documented facility inspections during three quarters in 2012, four quarters in 2013, and three quarters in 2014.

48. Respondent's alleged failure to perform facility inspections is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

#### **Count 5**

##### **Failure to Conduct Annual Comprehensive Site Compliance Evaluations**

49. The facts stated in Paragraphs 1 through 48 above are re-alleged and incorporated herein by reference.

50. Section 2.4.4 of Respondent's NPDES permit requires comprehensive site compliance evaluations to be conducted at least once a year. Evaluations shall provide for visual inspection of areas contributing to stormwater discharges associated with industrial activity for evidence of, or the potential for, pollutants entering the stormwater drainage system. Evaluations shall also include evaluation of the measures used to reduce pollutant loadings and determine if additional measures are needed. The evaluation shall be recorded in a report summarizing the scope, personnel, and date of the evaluation, and any observations of non-compliance and resolution of non-compliance, or a statement that the facility is in compliance with the conditions of its permit.

51. During the EPA Inspection, the inspector noted that the facility has not conducted or made records of comprehensive site compliance evaluations in 2012 and 2013.

52. Respondent's alleged failure to conduct annual comprehensive site compliance evaluations is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 6  
Failure to Conduct Visual Stormwater Monitoring**

53. The facts stated in Paragraphs 1 through 52 above are re-alleged and incorporated herein by reference.

54. Section 2.4.5 of Respondent's NPDES permit states that visual examination of stormwater quality shall be performed periodically, but at a minimum of once per year. Visual examinations must be documented in a report that includes the date and time, name of the person performing the examination, nature of the discharge, visual quality of the discharge, and probable sources of any observed contamination.

55. During the EPA Inspection, the inspector noted that the facility failed to conduct or make records of a visual examination of stormwater quality in 2012 and 2013.

56. Respondent's alleged failure to conduct visual stormwater monitoring is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 7  
Failure to Conduct Employee Training**

57. The facts stated in Paragraphs 1 through 56 above are re-alleged and incorporated herein by reference.

58. Section 2.4.3.e of Respondent's NPDES permit states that employee training programs to inform personnel responsible for implementing activities identified in the SWP2 Plan or otherwise responsible for stormwater management, at all levels of responsibility, of the components and goals of the SWP2 Plan. The SWP2 Plan shall provide for training existing and new staff.

59. Section 4.2.6 of Respondent's SWP2 provides that the storm water training program will be held at least annually, as required by the permit.

60. During the EPA Inspection, the inspector noted that the facility failed to conduct or make records of employee training in 2012, 2013 and 2014.

61. Respondent's alleged failure to conduct employee training is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

62. As alleged in the preceding Counts 1 through 7, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent are liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$187,500.



**CONSENT AGREEMENT**

63. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.
64. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/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/Final Order.
65. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.
66. Respondent waives their right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.
67. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
68. In settlement of this matter, Respondent shall complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements.
- a. Project Description: Respondent will replace the wet scrubbers used to control sand dust from the sand-handling process at its facility, located at 1502 South Spruce Street in Coffeyville, Kansas 67337, with a fabric filter. This project will eliminate the pit that currently holds the (wet) sand mixture. To implement this SEP, Respondent shall construct, and thereafter operate and maintain for no less than two years, a bag house air emission control system to control sand dust from the sand-handling process at its facility, as further described in Appendix A of this Consent Agreement/Final Order.
  - b. SEP Cost: the total expenditure for the SEP shall be not less than \$285,000 (three times the amount of penalty mitigated).
  - c. Completion Date: All work on the project shall be completed and in full operation by no later than January 1, 2017.
69. Within thirty (30) days of the SEP Completion Date, as identified in Paragraph 68.c. above, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below.
- a. The SEP Completion Report shall contain the following:
    - (i) A detailed description of the SEP as implemented;
    - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; and

(iii) The following certification signed by Respondent or its authorized representative:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

Cynthia Sans, or her successor  
WWPD/WENF  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 72 below.

70. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

71. Respondent shall continuously maintain, use and/or operate the equipment and/or systems installed as the SEP for not less than two (2) year following the SEP Completion Date.

72. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-upon Amount:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 68 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost described in Paragraph 68.b., above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$95,000;
  - (ii) If the SEP is completed in accordance with Paragraph 68, but the Respondent spent less than 90 percent of the amount of money required to be spent for the

project, Respondent shall pay a stipulated penalty to the United States in the amount of \$20,000;

- (iii) Respondent shall not be liable for stipulated penalties if:
    - (a) the SEP is not completed in accordance with Paragraph 68, but the Complainant determines that the Respondent: (1) made good faith and timely efforts to complete the project; and (2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; or
    - (b) the SEP is completed in accordance with Paragraph 68, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project; and
  - (iv) Respondent shall pay a stipulated penalty in the amount of \$100 for each day it fails to submit the SEP Completion Report after the due date specified in Paragraph 64 above, until the report is submitted.
- b. 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 in the sole discretion of EPA.
  - c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in Paragraph 83, below. Method of payment shall be in accordance with the provisions of Paragraphs 80 and 81, below.
  - d. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement/Final Order.

73. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is \$600,000;
- b. That, as of the date of executing this Consent Agreement/Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement/Final Order;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity; and
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

74. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 68.

75. Any public statement, oral or written, in print, film or other media, 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 on behalf of the United States Environmental Protection Agency to enforce federal laws."*

76. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

77. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent' agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

78. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of their knowledge, Respondent' Facility is in current compliance with Administrative Order on Consent, EPA Docket no. CWA-07-2015-0110, to achieve compliance with NPDES General Permit No. KS-R000038, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

#### **Penalty Payment**

79. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Twenty-eight Thousand Nine Hundred and Seventy-Five Dollars (\$28,975)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

80. The payment of penalties must reference docket number "CWA-07-2016-0034" and be remitted using one of the payment methods specified in Appendix B to this Order.

81. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

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

and

Patricia Gillispie Miller  
Senior Counsel  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

82. Respondent agrees that no portion of the civil penalty or interest paid by Respondent, and that no expenses incurred by Respondent in performing the SEP, pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

83. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

#### **Effect of Settlement and Reservation of Rights**

84. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

85. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 78 of this Consent Agreement/Final Order.

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

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

88. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

### **General Provisions**

89. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

90. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

91. The State of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

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

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



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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel

**For the Respondent, Acme Foundry, Inc.:**

Thomas A. Tarmaw  
Signature

5/9/2016  
Date

Thomas A. Tarmaw  
Name

President/CEO  
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.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

CERTIFICATE OF SERVICE

I certify that on the date below the original and one true copy of this Complaint and Consent Agreement/Final Order was delivered to and filed with the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below a true and correct copy of the original Complaint and Consent Agreement/Final Order was sent by first class mail to:

Thomas A. Tatman  
President  
Acme Foundry, Inc.  
1502 Spruce Street  
Coffeyville, Kansas 67337,

and

Jaimie Gaggero  
Director, Bureau of Water  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**ATTACHMENT A  
DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Background

Acme Foundry Inc. is a grey-iron casting foundry in Coffeyville, KS. The facility is required to implement its National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with industrial activity, permit number KSR000038, pursuant to Section 402(p) of the CWA.

Supplemental Environmental Project

The facility currently uses two Sand System Scrubbers to control particulate emissions from the Osborne molding line sand system. Dust from the process is captured by the scrubbers and water and dust mixture is eventually placed in an outdoor pit until it is properly disposed of. The facility plans to replace the wet scrubbers with a Single Fabric Filtration System. This will result in dust (dry) being dropped out of the filter before it is placed in bags and properly disposed. This project will result in elimination of the pit that currently holds the (wet) sand/dust mixture and air quality benefits which cannot be fully quantified at this time.

Supplemental Environmental Project Location

The SEP will be completed at Acme Foundry Inc. current facility location of 1502 Spruce St. in Coffeyville, KS.

Total Supplemental Environmental Project Cost

Acme Foundry Inc. has received a quote that the cost of the SEP is approximately \$600,000.

Schedule for Implementation of the Supplemental Environmental Project

The project will be complete and the baghouse will be operational by November 1, 2016. Acme Foundry currently estimates that the fabrication will be complete by July 1, 2016; installation will be completed by September 1, 2016; and shakedown will be complete by November 1, 2016.

**ATTACHMENT B  
PENALTY PAYMENT INFORMATION**

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties - CFC  
PO Box 979077  
St. Louis, MO 63197-9000

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson 314-418-4087

**ACH (also known as REX or remittance express):**

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

WWW.PAY.GOV  
Enter "SFO 1.1" in the search field

Open form and complete required fields.