

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	Docket No. CWA-07-2015-0049
)	
BESSER COMPANY USA)	
)	
)	COMPLAINT and
)	CONSENT AGREEMENT/
)	FINAL ORDER
Respondent,)	
)	
Proceedings under Section 1319(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Besser Company USA (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) 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 of Practice), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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, 40 C.F.R. Part 22.

2. This Complaint and Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 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. Respondent is Besser Company USA, a corporation incorporated under the laws of the state of Michigan and authorized to conduct business in Iowa.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

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 conform to the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

10. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), 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. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, to include facilities classified as Standard Industrial Classification 3321 (Gray and Ductile Iron Foundries).

13. 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, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. The IDNR issued a General Permit for the discharge of stormwater under the NPDES, General Permit No. 1. This General Permit became effective on October 1, 2012, and will remain effective through October 1, 2017. The General Permit governs stormwater discharges associated with industrial activity.

15. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

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

17. At all times relevant to this action, Respondent Besser Company USA was the owner and/or operator of the Quinn Machine & Foundry facility which is a 9.2-acre foundry located near Boone, Iowa. The facility operates under SIC code 3321.

18. Stormwater, snow melt, surface drainage, and runoff water leave Respondent’s facility and enter an underground storm sewer (piped Honey Creek) via a series of drop inlets, and discharge where Honey Creek daylight. The runoff and drainage from Respondent’s facility are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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)(ii), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Respondent discharged pollutants into Honey Creek, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

22. Stormwater runoff from Respondent's 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)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. Respondent applied for and was issued NPDES permit coverage under the General Permit described in Paragraph 14 above. IDNR issued Respondent NPDES permit discharge authorization number 0626-0440 on October 1, 1992, with coverage through September 30, 2016.

25. On July 15-16, 2014, an EPA representative performed an Industrial Stormwater Compliance Evaluation Inspection (hereafter "the EPA 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 management of stormwater at the site in accordance with its NPDES permit and the CWA. The inspector reviewed Respondent's records related to its NPDES permit and observed the facility. At the conclusion of the EPA inspection, Respondent was issued a Notice of Potential Violations indicating that the inspection found that the facility had failed to comply with its NPDES permit.

Allegations

26. The facts stated in Paragraphs 16 through 25 above are herein incorporated.

Inadequate Storm Water Pollution Prevention Plan (SWPPP)

27. Condition C.4.A.(1) of Part III of Respondent's NPDES permit requires Respondent's SWPPP to include a site map showing, among other things, each existing structural control measure to reduce pollutants in storm water runoff.

28. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent's site map does not clearly identify some of the structural measures used to reduce pollutants in stormwater runoff. Specifically, the controls surrounding some of the area inlets, used in an attempt to minimize migration of foundry sand and sediment into Honey Creek, were not identified in the site map.

29. Condition C.4.A. of Part III of Respondent's NPDES permit requires the SWPPP to include a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges, and must identify all activities and significant materials which may potentially be significant pollutant sources.

30. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent failed to clearly identify the foundry chemicals to be a potential source of pollutants in stormwater runoff in its SWPPP.

31. Condition C.4.B. of Part III of Respondent's NPDES permit requires the facility to develop a description of storm water management controls appropriate to the facility and implement such controls.

32. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent's SWPPP identified general management controls, such as good housekeeping, but did not identify any specific structural Best Management Practices (BMPs) appropriate to the facility that should be implemented to prevent the migration of industrial materials to the storm sewer collection system.

33. Condition C.2.A. of Part III of Respondent's NPDES permit requires the SWPPP to be signed in accordance with Part VI.G. of the NPDES permit, and Condition H of Part VI of Respondent's NPDES permit requires that any person signing documents required by the permit also submit a certification.

34. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent's SWPPP had not been signed or certified.

35. Respondent's failure to include all required components in its SWPPP is a violation of Respondent's NPDES permit, and as such, violates Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Failure to Implement Storm Water Pollution Prevention Plan

36. Condition C.4.B. of Part III of Respondent's NPDES permit requires the facility to develop a description of stormwater management controls appropriate to the facility and implement such controls.

37. Condition C of Part III of Respondent's NPDES permit requires facilities to implement the provisions of the SWPPP required under this Part as a condition of the permit.

38. Section 5.5.1 of Respondent's SWPPP identifies good housekeeping, visual inspections, spill prevention and response, maintenance of minimal ground slopes on site, diversion of stormwater to area storm sewer intakes, and employee training as the best management practices. Section 5.5.2 of Respondent's SWPPP identifies that diversion devices will be implemented to lessen the possibility of sediment entering area intakes where foundry sand is handled.

39. The EPA inspection identified in Paragraph 25, above, revealed that Respondent did not use the BMPs listed in its SWPPP, did not install diversion devices or other appropriate BMPs in all necessary locations, and failed to maintain the BMPs that were installed, in order to reduce the migration of industrial materials to the storm sewer system. The inspector observed significant amounts of reclaimed foundry sand scattered around the facility grounds, and many of the storm water inlets were surrounded with sand or inundated with sand and other materials. Some of the inlets had metal rings installed, but they were not effective. The inspector noted that sand deposition had occurred past the controls and were within some of the receiving water intakes. The inspector also observed an electrical transformer leaking oil near a stormwater drain inlet without any type of BMPs to capture the oil, and at least two areas where Mold Lite Plus was dumped on the ground. He also observed empty storage drums, carboys, raw materials, and scrap iron pieces located around the facility. Cake dust was observed migrating into a nearby stormwater inlet which was overwhelmed with reclaimed foundry sand and dust cake.

40. Condition C.4.B.(8) of Part III of Respondent's NPDES permit requires that an employee training program inform personnel at all levels of responsibility of the components and goals of the SWPPP, and should address topics such as spill response, good housekeeping, and material management practices. The SWPPP must also identify periodic dates for employee training.

41. Section 5.6 of Respondent's SWPPP provides specific topics that should be included in the employee training program, such as identification of chemicals, proper handling procedures, storage areas and quantities stored, identification of emission sources including waste water discharges, an understanding of applying permit requirements to work areas and tasks, and review of inspection reporting procedures and identification of environmental concerns.

42. The EPA inspection referenced in Paragraph 25, above, revealed that the SWPPP did not identify periodic dates for employee training. In addition, facility representatives stated that with the exception of spill response procedures, employee training did not cover the stormwater pollution prevention topics included in the SWPPP.

43. Respondent's failure to install and maintain the required BMPs and conduct SWPPP training are failures to implement the SWPPP and violations of Respondent's NPDES permit, and as such, violate Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Failure to Follow Proper Sampling Procedure

44. Condition N.4. of Part VI of Respondent's NPDES permit requires all monitoring to be conducted according to test procedures specified in Iowa Administrative Code 567-Chapter 63 unless other test procedures are specified in the permit.

45. Iowa Administrative Code 567-63.1(1) adopts Part 136 of Title 40 of the Code of Federal Regulations by reference, and requires that all parameters for which testing is required by a wastewater discharge permit, among other things, must be analyzed using approved methods specified in 40 C.F.R. § 136.3.

46. 40 C.F.R. § 136.3, Table II, allows a maximum holding time of 48 hours for analysis of biochemical oxygen demand (BOD).

47. 40 C.F.R. § 136.3, Table II, requires the use of a glass container for sampling oil and grease.

48. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent exceeded the holding time for BOD during the 2011 sampling event and used plastic rather than a glass container to collect oil and grease samples.

49. Condition N.3.E. of Part VI of Respondent's NPDES permit requires records of monitoring information to include the initials or name(s) of the individual(s) who performed the analyses.

50. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent did not identify the person collecting samples in the chain-of-custody forms.

51. Condition B.2. of Part V of Respondent's NPDES permit requires Respondent to measure pH at least annually.

52. The EPA inspection referenced in Paragraph 25, above, revealed that Respondent failed to collect pH measurements during at least 2011 through 2013.

53. Respondent's failure to follow proper sampling procedures is a violation of Respondent's permit, and as such, violates Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Non-Stormwater Discharges

54. Condition A of Part III of Respondent's NPDES permit prohibits non-stormwater discharges, with certain exceptions. The facility's SWPPP provides an unsigned certification that no process waters are discharged to storm sewers.

55. During the EPA inspection referenced in Paragraph 25, above, the inspector observed three non-stormwater discharges entering the facility's onsite storm sewer. Two of the non-stormwater discharges were overflows of non-contact cooling water, one from a cooling tower and the other from a single pass-through cooling line used to cool hydraulics. The facility

could not identify the third non-stormwater discharge, which was entering a storm sewer drop inlet from a lateral pipe entering the side of the manhole.

56. Respondent's discharges of non-stormwater are violations of Respondent's NPDES permit, and as such, violate Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Failure to Conduct and Document Site Inspections

57. Condition C.4.C. of Part III of Respondent's NPDES permit requires qualified personnel to inspect designated equipment and plant areas at appropriate intervals specified in the SWPPP, but in no case less than once a year. Condition C.4.C.(1). states that among other items, the visual site inspection shall cover structural stormwater management measures, sediment and control measures, and other structural pollution prevention measures identified in the SWPPP to ensure that they are operating correctly. Pursuant to Condition C.4.C.(3)., the facility is required to make a report summarizing certain information about the inspection and retain the report as part of the SWPPP.

58. The EPA inspection referenced in Paragraph 25, above, revealed that the facility failed to conduct and document the visual site inspections required by the SWPPP.

59. Respondent's failure to properly conduct and document site inspections is a failure of the Respondent to implement the SWPPP and is a violation of Respondent's 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), and implementing regulations.

60. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 69 below.

CONSENT AGREEMENT

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

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

63. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

64. Respondent waives any right to contest any issue of fact or law set forth above in this proceeding, and its right to appeal this Consent Agreement/Final Order.

65. Respondent and Complainant each agree to resolve the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

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

67. Respondent understands and agrees that this Consent Agreement/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/Final Order.

68. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311 and 1342.

Penalty Payment

69. Respondent agrees that, in settlement of the claims alleged in this Complaint and Consent Agreement/Final Order, Respondent shall pay a civil penalty of Thirty-Eight Thousand, Six Hundred and Nine dollars (\$38,609) within thirty calendar days of the effective date of this Final Order.

70. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2015-0049 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and to:

Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

71. No portion of the civil penalty or interest paid by Respondent 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.

72. Interest on any late payment will be assessed at the annual 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 and interest thereon.

Effect of Settlement and Reservation of Rights

73. 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 violations alleged 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.

74. The effect of settlement described above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 68 of this Consent Agreement/Final Order.

75. Nothing contained in this Consent Agreement/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.

76. 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.

77. With respect to matters not addressed in this Consent Agreement/Final Order, 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, monetary penalties, and damages.

General Provisions

78. This Consent Agreement/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, when filed. All time periods herein shall be calculated therefrom unless otherwise provided in this Consent Agreement/Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

79. The executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

80. 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.

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

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Erin Weekley
Office of Regional Counsel

Date

RESPONDENT:
BESSER COMPANY USA

SCOTT FOERSTNER
Name (print)

Scott Foerster
Signature

C.F.O.
Title

30-JUNE-2015
Date

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 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

CERTIFICATE OF SERVICE

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

C T Corporation System
Registered Agent, Besser Company USA
400 East Court Avenue
Des Moines, IA 50309.

I further certify that on the date below I sent by first class mail a true and correct copy of the original Complaint and Consent Agreement/Final Order to:

Scott Hubbard
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, MI 49503-2487.

and

Ted Petersen
Field Office #5
Iowa Department of Natural Resources
7900 Hickman Road, Suite 200
Windsor Heights, IA 50324-4432.

Dated this _____ day of _____, _____.

Name