

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
FRANKLIN COUNTY, KANSAS)	Docket No. CWA-07-2016-0021
)	
)	
Respondent)	CONSENT AGREEMENT/ FINAL ORDER
)	
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g))	
)	

The U.S. Environmental Protection Agency, Region 7 (EPA) and Franklin County, Kansas (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). 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, 40 C.F.R. Part 22 (“Consolidated Rules”).

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent discharged pollutants into waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

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

4. Respondent, Franklin County, Kansas (“Respondent”) is a construction and demolition landfill and transfer station located at 3323 Osborn Terrace, Ottawa, KS 66067.

Statutory and Regulatory Framework

5. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, inter alia, Section 402 of CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination Permit.

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 comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. The regulations at 40 CFR §122.26(b)(14)(v) establish requirements for stormwater discharges associated with industrial activity from landfills that receive or have received any industrial wastes.

9. Pursuant to Section 402(p) of CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

10. 40 C.F.R. §§ 122.26(a)(1)(ii), 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. 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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. KDHE issued the facility a Kansas General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”), KSR000163, for the discharge of stormwater. The General Permit governs stormwater discharges associated with industrial activity, including landfills. The permit is effective from November 1, 2011, through October 31, 2016. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention (“SWP2”) Plan.

FACTUAL BACKGROUND

13. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
14. At all times relevant to this action, Respondent was the owner and operator of a landfill and transfer station facility (“Site”), comprised of approximately 79 acres, and located on Highway 68 near Ottawa, Kansas.
15. 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).
16. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
17. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
18. KDHE issued NPDES Permit No. KSR000163 to Respondent on October 12, 2011. The permit was effective on November 1, 2011, and will expire on October 31, 2016. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Site.
19. On April 13-14, 2015, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) inspected the Site to determine Respondent’s compliance with its NPDES permit and the CWA.

ALLEGATIONS OF VIOLATION

Count 1

Failure to Properly Operate and Maintain the Facility

20. Section 4.1 of the Standard Conditions of Respondent’s NPDES permit states that the Respondent shall at all times properly operate and maintain all facilities.
21. During the EPA inspection referenced above, the inspector observed solid waste in storm drains and the potential for stormwater runoff coming from the scrap metal piles. Also, the north berm of the retention pond was in need of repair. These observed conditions resulted from Respondent’s failure to properly operate and maintain the facility.
22. Respondent’s alleged failure to properly operate and maintain 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), 1342(p).

Count 2

Failure to Document Self-Site Inspections

23. Section 2.4.3(d) of Respondent's NPDES permit states that Respondent shall perform inspections of designated facility areas at appropriate intervals, but no less than quarterly. The permit also requires that 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 for at least three years.

24. During the EPA inspection referenced above, the inspector noted the facility had not documented self-site inspections and maintained records of such inspections.

25. Respondent's alleged failure to document self-site inspections and maintain records 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), 1342(p).

Count 3

Failure to Conduct Annual Comprehensive Site Compliance Evaluations

26. Section 2.4.4 of Respondent's NPDES permit requires comprehensive site compliance evaluations to be conducted at least once a year. The evaluation shall be recorded in a report summarizing the scope, personnel, and date of the evaluation, and any observations of non-compliances and resolution of non-compliance, or a statement that the facility is in compliance with the conditions of its permit.

27. During the EPA inspection referenced above, the inspector noted that the facility failed to conduct comprehensive site evaluations in 2012 and 2014.

28. 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), 1342(p).

Count 4

Failure to Conduct Visual Stormwater Monitoring

29. 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.

30. During the EPA inspection referenced above, the inspector noted that the facility failed to record annual visual examinations of stormwater quality in 2012, 2013 and 2014.

31. 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), 1342(p).

CONSENT AGREEMENT

32. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

33. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

34. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.

35. Respondent and Complainant each agree to bear their own costs and attorney's fees.

36. Nothing contained in the 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.

37. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

38. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Sections 301 and 402 of the CWA, and is in compliance with EPA's Administrative Order for Compliance on Consent, Docket No. CWA-07-2015-0122.

39. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 38 above, of this CA/FO.

40. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$20,000.

41. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Allegations of Violations.

Reservation of Rights

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

43. With respect to matters not addressed in this CA/FO or the Administrative Compliance Order on Consent described above, 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 punitive damages.

PENALTY

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

44. Respondent shall pay a civil penalty of Twenty Thousand dollars (\$20,000). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and

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

Should the civil penalty not be paid as provided above, interest 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 the overdue amount from the due date through the date of payment.

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

Parties Bound

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

Effective Date

47. 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.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

2-26-16
Date


Chris Muehlberger
Assistant Regional Counsel

2.25.16
Date

RESPONDENT:

For Franklin County, Kansas:

Jon A. Holmes
Name/Title

Jon A. Holmes
Signature

2-17-16
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.

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