

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105**

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| IN THE MATTER OF: |) | DOCKET NO. CWA-09-2018-0009 |
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| National Recycling Corporation. |) | |
| Oakland, California |) | COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER |
| |) | |
| Respondent. |) | <i>Class II Administrative Penalty Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i> |
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CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311 (a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Assistant Director of the Enforcement Division, hereinafter “Complainant.”
3. Respondent is National Recycling Corporation.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States.
7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
8. 40 C.F.R. § 122.26(b)(14)(vi) defines stormwater discharges associated with industrial activity to include facilities under SIC Code 5093 (i.e. facilities involved in the recycling of materials).
9. CWA § 402(p)(4), 33 U.S.C. § 1342(p)(4) requires dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
10. The State of California has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ (“1997 General Permit”), which was in effect through June 30, 2015, and subsequently revised by the SWRCB on April 1, 2014, Water Quality Order No. 2014-0057-DWQ (the “General Permit”). The revised General Permit became effective on July 1, 2015.
11. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$177,500 in total, against a person for CWA Section 301(a) violations that occurred on or before December 6, 2013. For violations that occurred after December 6, 2013, EPA may assess a penalty up to \$16,000 per day of violation, not to exceed \$187,500. For violations that occurred after November 2, 2015, EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

12. Respondent is a California corporation and therefore, a person within the meaning of CWA § Section 502(5), 33 U.S.C. § 1362(5). Respondent operates a recycling facility located at 1312 Kirkham Street in Oakland, California (the “Facility”).

13. Respondent has been engaged in the recycling of materials at the Facility since at least July 1, 1997, a date best known to Respondent. Respondent's operations at the Facility fall within activities classified under SIC Code 5093 (Scrap and Waste Materials), and is therefore an "industrial activity" for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(vi).
14. Stormwater runoff from the Facility discharges to the City of Oakland municipal separate storm sewer system (MS4), i.e., from the curb and gutter running alongside the Facility conveying stormwater to municipal drain inlets located at the corners of Kirkham Court and 14th Street, and Poplar and 14th Streets. The discharge points are located at: the Facility's main entrance on Kirkham Court; a grated drain inlet within the Facility's Material Storage area adjacent to its Kirkham Court perimeter connected to the MS4 via subsurface piping; and the front and rear driveways onto Poplar Street. Such inlets, pipes, and the City of Oakland MS4 are "point sources" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
15. Stormwater runoff from the Facility is a "stormwater discharge associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(vi).
16. Stormwater discharges from the Facility include deteriorated cardboard, plastic and glass debris, metals, as well as oil and grease, and therefore contain "pollutants," as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
17. Discharges from the Facility enter the City of Oakland MS4 and discharge into the San Francisco Bay. The San Francisco Bay is a "water of the United States" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7) and implementing regulations.
18. Respondent's discharge of pollutants in stormwater into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
19. On or about July 1, 1997, Respondent submitted an NOI to the State Water Board seeking coverage under the 1997 General Permit for the Facility. The State Water Board granted Respondent coverage under the 1997 General Permit and assigned WDID Number 2 2 01I013217. On May 11, 2015, Respondent reapplied for coverage under the General Permit and received authorization from the State Water Board.
20. On February 6, 2017, representatives of EPA Region 9 inspected the Facility to evaluate Respondent's compliance with the General Permit. On April 3, 2017, EPA provided its inspection report to Respondent.
21. During the February 6, 2017 inspection, the EPA inspectors made the following observations regarding Respondent's compliance with the General Permit's requirements pertaining to the Facility's storm water pollution prevention plan (SWPPP):
 - a. The SWPPP's Site Map did not include several informational items required by

Part X.E.3 of the General Permit, *i.e.*, it did not specifically identify: all the points of discharge (unidentified point of discharge located within the Materials Receiving area of the Facility); impervious areas of the Facility, locations of significant leaks and spills, locations of any vehicle and equipment storage/maintenance areas, waste treatment and disposal areas (two dumpsters located on Poplar street); and dust or particulate generation areas (baled cardboard stored in Facility's open yard exposed to precipitation).

- b. Failure to identify in its SWPPP the positions within its organization, beyond "trained facility personnel," who assist in implementing the SWPPP and conducting monitoring, as required by Part X.D.1 of the General Permit.
 - c. Failure to prepare a Monitoring Implementation Plan that includes a justification for alternative discharge locations, as required by Part X.I.3.a of the General Permit. EPA inspectors observed the presence of a maintenance shop in Building 2/Area B of the Facility, unaddressed leaks and spills of oil and grease on the ground immediately outside the maintenance shop, and storm water containing a visible sheen discharging out of Driveway D-4 onto Poplar Street. No other dedicated maintenance areas were observed at the Facility, indicating that storm water samples collected from Driveway D-1 are not similar to D-4 and are not likely representative of all discharges from the Facility.
22. During the February 6, 2017 inspection, the EPA inspectors made the following observations regarding Respondent's failure to implement Best Management Practices (BMPs) at the Facility, including:
- a. Failure to implement good housekeeping practices as required by Part X.H.1 of the General Permit, including:
 - i. Observation of all outdoor areas associated with industrial activity and cleaning and disposal of any identified debris, waste, spills, tracked materials, or leaked materials, as required by Part X.H.1.a.i of the General Permit.
 - ii. Minimization or prevention of material tracking, as required by Part X.H.1.a.ii of the General Permit.
 - iii. Coverage of all stored industrial materials that can be readily mobilized by contact with storm water, as required by Part X.H.1.a.v of the General Permit.
 - iv. Containment of all stored non-solid industrial materials or wastes that can be transported or dispersed by the wind or contact with storm water, as required by Part X.H.1.a.vi. of the General Permit.
 - v. EPA inspectors observed a significant accumulation of deteriorated

cardboard, plastic and glass debris on the ground throughout the Facility's open yard, indicating that Respondent was not implementing good housekeeping practices at the Facility as required by the General Permit.

- b. Failure to engage in preventative maintenance at the Facility, including the establishment of procedures for prompt maintenance and repair of equipment, and maintenance of systems when conditions exist that may result in the development of spills or leaks, as required by Part X.H.1.b.iv of the General Permit. EPA inspectors observed forklifts and an industrial baler stored outside the Facility's vehicle/equipment maintenance shop housed in Building 2 of the Facility. Although absorbent material was observed around one of the forklifts in the area, Respondent failed to implement procedures for prompt maintenance and repair of equipment.
- c. Failure to establish procedures and/or controls to minimize spills and leaks, as required by Part X.H.1.c.i. of the General Permit. EPA inspectors observed unaddressed leaks and spills of oil and grease on the ground adjacent to the Facility's vehicle and equipment maintenance shop.
- d. Failure to prevent or minimize handling of industrial materials or wastes that can be readily mobilized by contact with storm water during a storm event, as required by Section X.H.1.d.i of the General Permit. EPA inspectors observed baled cardboard stored in the Facility's open yard exposed to precipitation. EPA inspectors also observed that the cardboard had deteriorated due to exposure to precipitation, resulting in stormwater discharging through rills formed in the accumulated fine cardboard material from Driveway D-1 to the curb and gutter of Kirkham Street.
- e. Failure to conduct proper training of all Facility personnel responsible for environmental management to implement the stormwater control requirements of the General Permit, and document this training as required by Section X.H.1.f.i. and f.v. of the General Permit. During the inspection, Respondent could not produce employee training records addressing BMP implementation, effectiveness evaluations, visual observations, or monitoring activities for EPA review.
- f. Failure to maintain BMP implementation records, training records, and records related to any spills and clean-up related response activities for a minimum of five years, as required by Part X.H.1.g.iii of the General Permit. EPA inspectors observed that the Facility maintained a 3-ring binder containing the Discharger's monthly visual observation records. EPA inspectors noted that the most recent entry was on August 22, 2016, indicating that the Discharger was not maintaining current documentation of SWPPP implementation activities.
- g. Failure to implement and maintain any advanced BMPs as necessary to reduce the discharge of pollutants in storm water from the Facility that best reflects industry

practice, as required by Part X.H.2.a of the General Permit. EPA inspectors observed that Respondent had not implemented any advanced BMPs to minimize exposure of voluminous amounts of processed and baled recyclable materials in the Facility's open yard that was exposed to precipitation.

23. Between July 1, 2015 and December 4, 2017, the National Oceanic and Atmospheric Administration recorded at least ten (10) days with rainfall in excess of 0.5 inches in the area of the Facility. Upon information and belief, each of these ten days resulted in a discharge of stormwater associated with industrial activity from the Facility.

IV. ALLEGED VIOLATIONS

24. Between July 1, 2015 and December 4, 2017, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a) on at least ten (10) days by discharging storm water associated with industrial activity from a point source into waters of the United States while not in compliance with an NPDES permit as described in paragraphs 21 and 22 above. Further, Respondent violated CWA Section 402, 33 U.S.C. § 1342, each day it failed to comply with the General Permit.

V. ADMINISTRATIVE PENALTY

25. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of twenty-three thousand one hundred six dollars (**\$23,106**) within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

26. Respondent shall make penalty payment by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

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)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

27. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.

28. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Greg Gholson
Enforcement Division (ENF-3-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

29. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
30. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

31. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

32. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
 - b. Neither admits nor denies specific factual allegations contained in the complaint;
 - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
 - d. waives any right to contest the allegations set forth in this CA/FO; and
 - e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

33. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
34. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

35. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

36. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

37. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
38. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

_____/s/_____
Kathleen H. Johnson, Director
Enforcement Division

April 26, 2018
Date

For Respondent National Recycling Corporation

_____/s/_____
Richard Wang
Manager

April 5, 2018
Date

