

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

BEFORE THE ADMINISTRATOR

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| IN THE MATTER OF |) | |
| |) | Docket No. CWA-07-2019-0268 |
| WesTech Engineering, Inc. |) | |
| |) | COMPLAINT AND |
| Respondent |) | CONSENT AGREEMENT/ |
| |) | FINAL ORDER |
| Proceedings under Section 309(g) of the |) | |
| Clean Water Act, 33 U.S.C. § 1319(g) |) | |
| _____ |) | |

COMPLAINT

I. PRELIMINARY STATEMENT

1. The U.S. Environmental Protection Agency (EPA) Region 7 (Complainant) and WesTech Engineering, Inc. (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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

2. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

3. This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

II. JURISDICTION

4. This administrative action is being conducted under the authority vested in the Administrator of the EPA, pursuant to Sections 309(g) and 311(b)(6) of the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act or CWA), 33 U.S.C. §§ 1319(g) and 1321(b)(6), and in accordance with the Consolidated Rules of Practice.

5. Under this Consent Agreement and Final Order, EPA alleges that Respondent, WesTech Engineering, Inc., violated its permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

III. PARTIES

6. The Complainant is represented herein by the Director of the Environmental Enforcement and Compliance Division of EPA Region 7, as duly delegated by the Administrator of EPA.

7. Respondent is and was at all relevant times a company incorporated under the laws of the state of California and is and at all relevant times authorized to conduct business in the state of Iowa.

IV. STATUTORY AND REGULATORY BACKGROUND

8. 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.

9. 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.

10. 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. That Section requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

11. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

12. 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.

13. 40 C.F.R. § 122.26(b)(14)(vi) defines “stormwater discharge associated with industrial activity” as “the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.”

14. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the assessment of a civil penalty of not more than \$125,000 for violations of Section 301 of the CWA or conditions or limitations in a permit issued pursuant to Section 402 of the CWA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection

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Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$267,415 for violations that occur after November 2, 2015 where the penalty is assessed after January 15, 2018.

15. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

V. FACTUAL BACKGROUND

16. At all times relevant to this Consent Agreement and Final Order, Respondent owned and operated an industrial facility located at 600 Arrasmith Trail, Ames, Iowa (“facility” or “site”).

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s site through one of at least two outfalls and flow to the South Skunk River.

18. The South Skunk River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

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

20. Stormwater discharges associated with industrial activity are “point sources” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14).

22. Stormwater runoff from industrial activity at Respondent’s above referenced facility 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, including discharges of stormwater associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. The Iowa Department of Natural Resources NPDES General Permit No. 1 (“NPDES Permit”), authorizes discharges of stormwater runoff, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The NPDES Permit was effective October 1, 2012 through October 1, 2017, and administratively extended and then reissued March 1, 2018 through February 28, 2023.

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25. The NPDES Permit governs Respondent's stormwater discharges associated with industrial activities to the South Skunk River.

26. The NPDES Permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES Permit as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES Permit.

27. Respondent has operated under the NPDES Permit at all times relevant to this Consent Agreement and Final Order.

28. On October 17 and 18, 2018, the EPA performed an Industrial Stormwater Inspection ("CWA 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 NPDES Permit and the CWA.

29. During the CWA Inspection, the EPA inspector toured the facility, observed discharge locations, photographed various stormwater-related areas, obtained copies of the facility's stormwater pollution prevention plan (SWPPP), evaluated the facilities site inspection, employee training and other records, and evaluated stormwater management practices.

30. A Notice of Potential Violation (NOPV) was issued by the EPA inspector at the conclusion of the CWA Inspection.

31. A copy of the Stormwater Inspection report was sent to Respondent by the EPA by letter dated December 28, 2018.

VI. ALLEGED VIOLATIONS OF LAW

32. The facts stated above are herein incorporated by reference.

Count 1

Failure to Update and Revise Stormwater Pollution Prevention Plan

33. Section III.C. of the NPDES Permit requires the development of a SWPPP, including an accurate description of potential pollutant sources with a site map. The site map, in pertinent part, shall identify the location of significant structures, each stormwater outfall, and the body of water the discharge is directed to. Section III.C.3. of the NPDES Permit requires Respondent to amend the SWPPP whenever there is a "change in design, construction, operation, or maintenance" that may significantly affect the potential to discharge and/or objectives of the SWPPP.

34. At the time of the CWA inspection, the SWPPP was dated 2008 and signed by previous owner of the facility. The SWPPP had not been revised since to include Respondent as owner, nor updated to accurately reflect the current site activities.

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35. Respondent's failure to update and/or revise its SWPPP is a violation of the conditions of Respondent's NPDES Permit, and as such, violates Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Inadequate Control Measures/Best Management Practices

36. Section III.C.4.B. of the NPDES Permit requires in pertinent part, development of appropriate measures and controls to manage stormwater, and implementation of such controls, including administrative Best Management Practices (BMPs), structural BMPs, and non-structural BMPs. The section requires good housekeeping to include "maintenance of areas in a clean, orderly manner, including handling, process, and storage areas for raw materials, scrap metals, general refuse, paints, etc."

37. During the CWA Inspection, significant amounts of oily/dark fluid-stained soil and/or fluid puddles and evidence of extremely poor housekeeping were observed in several areas around the facility where hydraulic equipment is stored. The CWA inspection revealed ground covered with sand-blasting material near a deteriorating wall of the blasting facility. Additionally, the CWA inspection revealed the inlets to outfalls did not have controls and contained debris generated by the facility's industrial processes. These observations indicate that control measures were not being implemented, not being maintained, or were inadequate.

38. Respondent's failure to implement, maintain and/or modify adequate control measures is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3

Failure to Conduct and Document Visual Stormwater Examinations

39. Section III.C.4.C. of the NPDES Permit requires Respondent to conduct and document periodic visual examinations of stormwater quality from each stormwater outfall. The frequency is to be stated in the SWPPP, but at a minimum once per year. Visual examinations shall include observations of the discharge characteristics such as, the nature of the discharge, visual quality, clarity, or presence of color, odor, floating solids, settleable solids, foam, oil sheens or other sources of contamination. Visual examination reports records are required to be maintained and accessible for a minimum of three years.

40. At the time of the EPA inspection, the facility did not have any records of annual visual examinations of each stormwater outfall.

41. Respondent's failure to conduct or document stormwater visual examinations is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

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Count 4
Failure to Conduct Employee Training

42. Section III.C.4.B.(8) of the NPDES Permit requires Respondent to conduct employee training consistent with the annual requirement in its SWPPP.

43. At the time of the EPA inspection, the facility did not have any record of annual employee training consistent with its SWPPP requirements.

44. Respondent's failure to conduct annual employee training consistent with its SWPPP is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

VII. CONSENT AGREEMENT

45. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

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

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

48. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement and Final Order, and its right to appeal the Final Order portion of the Consent Agreement and Final Order.

49. Respondent and EPA agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

50. This Consent Agreement and Final Order shall resolve all civil and administrative claims for all facts and violations of the CWA alleged in this document, existing through the effective date of this Consent Agreement and Final Order.

51. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CWA and regulations promulgated thereunder.

52. Respondent certifies by the signing of this Consent Agreement and Final Order that Respondent's facility is in compliance with all requirements of the CWA, 33 U.S.C. § 1251, *et seq.*, and all regulations promulgated thereunder.

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53. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 52 of this Consent Agreement and Final Order.

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

55. Nothing contained in the Consent Agreement and 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.

56. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty in the amount of **Twenty-Six Thousand Dollars (\$26,000)**, as set forth below.

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

58. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue from the date of delinquency until such civil penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due in accordance with 31 U.S.C. § 3717(e)(2).

59. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Effective Date

60. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and Final Order shall be effective on the date the Final Order is filed 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 and Final Order.

Reservation of Rights

61. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Sections 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

62. EPA reserves the right to take enforcement action with respect to any other violations of the CWA, or other applicable law. EPA further reserves the right to take enforcement action against Respondent for any future violations of the CWA, and its implementing regulations, and to enforce the terms and conditions of this Consent Agreement and Final Order.

63. With respect to matters not addressed in this Consent Agreement and Final Order, 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.

64. Full payment of the penalty proposed in this Consent Agreement and Final Order shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein and shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.

65. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

66. The provisions in this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by EPA that Respondent has fully implemented the actions required in the Final Order.

Payment of Civil Penalty

67. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil mitigated penalty of **Twenty-Six Thousand Dollars (\$26,000)**.

68. Payment of the penalty shall identify Respondent by name and docket number, and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties

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Cincinnati Finance Center
P. O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

69. A copy of the check, or other information confirming payment, shall simultaneously be sent to the following:

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

and

Melissa Bagley, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Parties Bound

70. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondents' agents, successors, and/or assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms, or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

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COMPLAINANT:
U.S. Environmental Protection Agency Region 7

DeAndre Singletary
Acting Director
Enforcement and Compliance Assurance Division

Date

Melissa Bagley
Assistant Regional Counsel
Office of Regional Counsel

Date

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FOR RESPONDENT:
WesTech Engineering, Inc.



Signature

11 SEPT 2019
Date

JAMES R. HANSON
Name

VICE PRESIDENT
Title

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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.

Karina Borromeo
Regional Judicial Officer

Date

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CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

bagley.melissa@epa.gov.

Copy via first class mail to:

Registered Agent
Corporation Service Company
505 5th Avenue, Suite 729
Des Moines, Iowa 50309

Mr. Michael L. Young, Group Leader
WesTech Engineering, Inc.
600 Arrasmith Trail
Ames, Iowa 50010

Dated this _____ day of _____, 2019.

Lisa Haugen
Regional Hearing Clerk