

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BASALITE CONCRETE PRODUCTS, LLC

Meridian, Idaho

Respondent.

DOCKET NO. CWA-10-2020-0090

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,320 per day for each day during which the violation continues, up to a maximum penalty of \$278,995. See also 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A)

and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Basalite Concrete Products, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as

authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” is defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2.

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.8. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification code 3271 (Concrete Block and Brick). 40 C.F.R. § 122.26(b)(14).

3.9. EPA is authorized pursuant to CWA Section 402(a), 33 U.S.C. § 1342(a), to administer the NPDES permitting program for stormwater discharges associated with industrial activity in the state of Idaho.

3.10. EPA issued the Multi-Sector General Permit for discharges of stormwater associated with industrial activity on June 4, 2015, and the permit became effective in the State of Idaho on August 12, 2015 (MSGP).

3.11. Section 1.1.1 of the MSGP states that facilities engaged in certain industrial activities, including activities covered under Standard Industrial Classification code 3271, are eligible to apply for permit coverage to discharge stormwater to surface waters.

General Allegations

3.12. Respondent is a corporation licensed to do business in the State of Idaho and is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.13. At all times relevant to the allegations in Part III of this Consent Agreement, Respondent owned and operated the Basalite Concrete Products, LLC facility located at 1300 East Franklin Road in Meridian, Idaho (Facility).

3.14. The primary operations conducted by Respondent at the Facility include the manufacture and storage of concrete products for distribution and commercial sale, which are activities categorized under Standard Industrial Classification code 3271 (Concrete Block and Brick).

3.15. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater into Five Mile Creek via one identified discharge point (Outfall 001). The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.16. Outfall 001 is a “point source” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.17. Five Mile Creek is a perennial tributary of Fifteen Mile Creek. Fifteen Mile Creek is a perennial tributary of the Boise River. The Boise River is a perennial tributary of the Snake River. The Snake River is a perennial tributary of the Columbia River, which flows to the Pacific Ocean. Thus, Five Mile Creek is a “navigable water” as defined under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3.18. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by MSGP permit number IDR053147. The Facility was previously covered under the MSGP that became effective on September 29, 2008, under permit number IDR05C574.

3.19. At times relevant to this Order, Respondent was implementing a Stormwater Pollution Prevention Plan (SWPPP) dated November 6, 2015, at the Facility.

3.20. On May 16, 2019, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent’s compliance with the MSGP and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

3.21. As part of the inspection, EPA requested records concerning Respondent’s compliance with the MSGP for the Facility. Respondent provided EPA with the Facility’s SWPPP, dated November 6, 2015, and the Facility’s monitoring records.

Alleged Violations

3.22. As described below, EPA alleges that, after obtaining MSGP coverage, Respondent violated certain terms and conditions of the MSGP and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Count 1: Failure to Maintain Control Measures

3.23. Section 2.1.2.3 of the MSGP requires Respondent to maintain all control measures in order to minimize pollutant discharges.

3.24. EPA alleges that Respondent violated Section 2.1.2.3 of the MSGP, by failing to maintain a berm designed to route stormwater from the product storage areas and loading areas through the vegetative area east of the detention pond. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2: Failure to Minimize Discharges of Sediment

3.25. Section 2.1.2.5 of the MSGP requires Respondent to use structural and nonstructural measures to minimize the discharge of sediment.

3.26. EPA alleges that Respondent violated Section 2.1.2.5 of the MSGP, by failing to use structural or nonstructural measures to minimize the discharge of sediment from three unpaved access roads that travel over Five Mile Creek. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3: Failure to Perform and Document Routine Quarterly Inspections

3.27. Section 3.1 of the MSGP requires Respondent to perform and document routine quarterly Facility inspections.

3.28. EPA alleges that Respondent violated Section 3.1 of the MSGP, by failing to perform or provide documentation of routine quarterly inspections of the Facility during the fourth quarter of 2015, all quarters in 2016, 2017, and 2018, and the first quarter of 2019. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4: Failure to Perform and Document Quarterly Visual Sample Assessments

3.29. Section 3.2 of the MSGP requires Respondent to perform and document quarterly visual assessments of a stormwater sample.

3.30. EPA alleges that Respondent violated Section 3.2 of the MSGP, by failing to perform or provide documentation of quarterly visual assessments of a stormwater sample during the fourth quarter of 2015, all quarters in 2016, 2017, and 2018, and the first quarter of 2019. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5: Failure to Document Corrective Action SWPPP Review

3.31. Section 4.2 of the MSGP requires Respondent to provide documentation of the Facility's review of the SWPPP to determine if Facility modifications are necessary if the average of four quarterly sampling results exceeds an applicable benchmark. If less than four benchmark samples have been taken, but the results are such that an exceedance of the four quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than four times the benchmark level) this is considered a benchmark exceedance, triggering the need for SWPPP review.

3.32. EPA alleges that Respondent violated Section 4.2 of the MSGP by failing to provide documentation of a SWPPP review following a benchmark exceedance in 2017. The Facility had a sampling event in the first quarter of 2017 that exceeded the Total Iron MSGP benchmark concentration level by more than four times. The Facility did not have documentation of samples in any other quarter in 2017. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 6: Failure to Submit Annual Reports

3.33. Section 7.5 of the MSGP requires that Respondent submit an Annual Report to EPA by January 30 for each year of permit coverage.

3.34. EPA alleges that Respondent violated Section 7.5 of the MSGP by failing to submit an annual report in 2016, 2017, or 2018. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$39,750.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check

or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
park.chae@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected all activities that resulted in violation(s) alleged in Part III above.

4.11. This Consent Agreement and the Final Order constitute a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of this Consent Agreement.

4.12. Except as described in Subparagraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative

defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

FOR RESPONDENT:

MIGUEL GONZALEZ
Plant Manager
Basalite Concrete Products, LLC

DATED:

FOR COMPLAINANT:

LAURIS C. DAVIES
Acting Director
Enforcement and Compliance Assurance Division
EPA Region 10