

US EPA ARCHIVE DOCUMENT

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
MISSOURI BETTER BEAN, LLC) Docket No. CWA-07-2012-0027
)
Respondent) CONSENT AGREEMENT/
) FINAL ORDER
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Missouri Better Bean, LLC (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), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

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 Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 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 (Complainant).

4. Respondent is Missouri Better Bean, LLC, a limited liability corporation incorporated under the laws of Missouri and authorized to conduct business in the state of Missouri.

Statutory and Regulatory Framework

5. 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 only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

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

8. 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.

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity”, in part, as facilities classified as Standard Industrial Classification 2869 (Industrial Inorganic Chemicals Not Elsewhere Classified).

11. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. MDNR implemented a General Permit for the discharge of stormwater under the NPDES, on May 23, 2008. The permit governs stormwater discharges associated with industrial activity for industrial inorganic chemicals, in this instance, biodiesel and its byproduct, glycerin.

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/or operator of a facility known as Missouri Better Bean, LLC, located at 136 W. Main Street and 2nd and Elm Street, Bunceton, Missouri (the Facility), operating under SIC code 2869.

15. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into Stephens Branch. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

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

17. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Respondent discharged pollutants into Stephens Branch, a “navigable water” as defined by CWA Section 502, 33 U.S.C § 1362.

19. 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).

20. 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.

21. Respondent applied for and was issued NPDES permit coverage under the general permit described in Paragraph 12 above. MDNR issued the Respondent NPDES Permit Nos. MO-R23E006 and MO-R23E007, which became effective on May 23, 2008. The permits govern stormwater discharges associated with industrial activity. Prior to the current permits being issued, the Main Street Facility was covered under permit MO-R23A121.

22. On August 25, 2011, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the Site in accordance with the CWA.

Allegations of Violations

Count 1

Failure to Comply with Effluent Limitations

23. The facts stated in Paragraphs 13 through 22 above are herein incorporated.

24. Part A of Respondent's NPDES permit establishes the discharge limit for Total Suspended Solids (TSS), Chemical Oxygen Demand (COD), and pH. Respondent's permit establishes a daily maximum discharge limit for TSS of 100 mg/L and a monthly average of 50 mg/L. Respondent's permit establishes a daily maximum discharge limit for COD of 120 and a monthly average of 90 mg/L for COD. Respondent's permit establishes a discharge limit for pH as 6.5 to 9.0 Standard Units (SU).

25. The EPA inspection referenced in Paragraph 22 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the Respondent's Discharge Monitoring Reports (DMRs) revealed that Respondent's discharge exceeded the effluent daily max and/or monthly average limitations of their NPDES Permit as follows:

<u>Date</u>	<u>Parameter</u>	<u>Location</u>	<u>Daily Max</u>	<u>Monthly Ave.</u>	<u>Reported Value</u>
3/17/2008	TSS	Main St.	70 mg/L	70 mg/L	180 mg/L
3/17/2008	TSS	Elm St.	70 mg/L	70 mg/L	164 mg/L
6/26/2008	COD	Elm St.	120 mg/L	90 mg/L	145 mg/L
3/24/2009	TSS	Main St.	100 mg/L	50 mg/L	104 mg/L
3/24/2009	TSS	Main St.	100 mg/L	50 mg/L	114 mg/L
10/15/2009	TSS	Elm St.	100 mg/L	50 mg/L	65 mg/L
1/20/2010	pH	Main St.	-----6.5-9.0 SU-----		6.22 SU
1/20/2010	pH	Main St.	-----6.5-9.0 SU-----		6.20 SU
1/20/2010	pH	Elm St.	-----6.5-9.0 SU-----		6.13 SU
7/14/2010	TSS	Elm St.	100 mg/L	50 mg/L	74 mg/L
9/30/2011	COD	Main St.	120 mg/L	90 mg/L	163 mg/L

26. Respondent's alleged discharge of TSS, COD, and pH in excess of permitted limits is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 42 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count 2

Inadequate Stormwater Pollution Prevention Plan ("SWPPP")

27. The facts stated in Paragraphs 13 through 22 above are herein incorporated.

28. Part A of Respondent's NPDES Permit, Effluent Limitations and Monitoring Requirements, Part 1 states that the SWPPP must include an assessment of all stormwater discharges associated with raw materials, intermediate materials, finished products and waste products. This must include a list of potential contaminants exposed to stormwater and an assessment of all chemical handling and storage procedures.

29. The EPA inspection referenced in Paragraph 22 above, documented that Respondent's SWPPP did not include the correct number of tanks on Site and did not contain an assessment of all stormwater discharges associated with materials onsite.

30. Respondent's alleged failure to develop an adequate SWPPP is a violation of Respondent's 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.

Count 3

Failure to Properly Conduct and Document Inspections

31. The facts stated in Paragraphs 13 through 22 above are herein incorporated.

32. Section A, Effluent Limitations and Monitoring Requirements, Part 1(g) of Respondent's NPDES Permit states that Respondent's SWPPP shall include a schedule for monthly site inspections and a brief written report. The inspection must include observation and evaluation of BMP effectiveness, deficiencies, and corrective measures that will be taken. Deficiencies (such as leaking pipes, improper glycerin handling, etc.) must be corrected within seven days and MDNR must be notified by letter. Inspection reports must be maintained on Site with the SWPPP.

33. The EPA inspection referenced in Paragraph 22 above, revealed that Respondent's monthly visual Site inspection records were inadequate, due to failure to address deficiencies and spills. Specifically, the inspector observed that secondary containments near the loading area were full of orange/brown contaminated water. The inspector observed evidence of significant ground discoloration on the concrete surface loading area and on the outside walls of secondary containment. The EPA inspection also documented significant ground discoloration at the inlet and outlet of Outfall 003 of the Main Street Facility. The ground had an orange/brown color with a distinct odor. These deficiencies were not addressed in Respondent's Site inspection records, nor were these deficiencies corrected.

34. Respondent's alleged failure 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.

Count 4

Failure to Mark Outfalls

35. The facts stated in Paragraphs 13 through 22 above are herein incorporated.

36. Section A, Effluent Limitations and Monitoring Requirements, Part 10 of Respondent's NPDES permit states that all outfalls must be clearly marked in the field.

37. The EPA inspection referenced in Paragraph 22 above, revealed that the Respondent failed to mark outfalls, as required by Respondent's NPDES permit. At the time of the inspection, Respondent had not marked outfalls locations of Outfall 002 at the Main Street facility or Outfall 001 at the Elm Street facility, nor could Respondent identify the location of these outfalls in general.

38. Respondent's alleged failure to mark outfalls is a violation of Respondent's 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.

Count 5

Failure to Follow Proper Sampling Procedure

39. The facts stated in Paragraphs 13 through 22 above are herein incorporated.

40. Part I.A.5 of the Standard Conditions of Respondent's NPDES permit require Respondent, for each measurement or sample taken pursuant to the requirements of this permit, to record the following information: (i) the date, exact place, and time of sampling or measurements; (ii) the individual(s) who performed the sampling or measurements; (iii) the date(s) analyses were performed; (iv) the individual(s) who performed the analyses; (v) the analytical techniques or methods used; and (vi) the results of such analyses.

41. The EPA inspection referenced in Paragraph 22 above, revealed that Respondent's monitoring records, specifically the lab analysis, did not indicate the date of the analysis to determine compliance with hold time requirements of 40 C.F.R. 136, in violation of the Standard Conditions of Respondent's NPDES permit.

42. Respondent's alleged failure to follow proper sampling procedure is a violation of Respondent's 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.

Count 6

Failure to Follow Spill Cleanup Procedure

43. The facts stated in Paragraphs 13 through 22 above are herein incorporated.

44. Part 3 of the Requirements section of Respondent's NPDES Permit requires "All spills must be cleaned up within 24 hours or as soon as possible and a written report of the incident supplied with the facility's Discharge Monitoring Report."

45. The EPA inspection referenced in Paragraph 22 above, documented significant ground discoloration at the inlet and outlet of Outfall 003 of the Main Street Facility. The ground had an orange/brown color with a distinct odor. Three to four inches below surface, the ground appeared dark black and displayed a petroleum odor. The spills were not noted on the Discharge Monitoring Reports reviewed during the inspection.

46. The EPA inspection referenced in Paragraph 22 above, documented significant staining at the concrete surface of the loading area and on the outside walls of secondary containment at the Main Street Facility. The spills were not noted on the Discharge Monitoring Reports reviewed during the inspection.

47. The EPA inspection referenced in Paragraph 22 above, documented the secondary containments near the loading area were full of orange/brown contaminated stormwater. The spills were not noted on the Discharge Monitoring Reports reviewed during the inspection..

48. Respondent's alleged failure to follow spill cleanup procedures is a violation of Respondent's 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.

CONSENT AGREEMENT

49. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

50. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO.

51. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by EPA in the Factual Background and Allegations of Violation sections set forth above.

52. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CAFO.

53. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

54. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

55. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

56. This CAFO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

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

58. The effect of settlement described in Paragraph 56 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 57 above, of this CAFO.

59. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay \$27,000 as set forth in Paragraph 1 of the Final Order.

60. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay Twenty-Seven Thousand Dollars (\$27,000) to be paid in full no later than 30 days after the effective date of this CAFO.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. 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.

3. Payment of the penalty shall be by cashier or certified check made payable to the “United States Treasury” and remitted to:

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

This payment shall reference docket number CWA-07-2012-0027.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

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

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

Parties Bound

5. This Final Order portion of this CAFO 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 CAFO.

General Provisions

6. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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.

7. Complainant 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 CAFO.

8. This 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Kristen Nazar
Assistant Regional Counsel

RESPONDENT:
MISSOURI BETTER BEAN, LLC

Date

Name (Print)

Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Regional Judicial Officer

Date