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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Shine Bros. Corp.,	)	Docket No. CWA-07-2014-0051
	)	
Respondent.	)	COMPLAINT AND
	)	CONSENT AGREEMENT/
Proceedings under Sections 309(g) and	)	FINAL ORDER
311(b)(6) of the Clean Water Act,	)	
33 U.S.C. §§ 1319(g) and 1321(b)(6)	)	
	)	

COMPLAINT

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 ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 ("EPA") and Respondent, Shine Bros. Corp., 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) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order ("CAFO") serves as notice that the EPA has reason to believe that the Respondent, Shine Bros. Corp., has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the "Complainant").

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5. Respondent, Shine Bros. Corp., is and was at all relevant times a corporation under the laws of and authorized to conduct business in the State of Iowa.

6. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

Statutory and Regulatory Framework

Prohibition against Discharges

7. 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.

8. 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.

Stormwater

9. 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.

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

11. 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.

12. 40 C.F.R. § 122.26(b)(14)(ii) defines "stormwater discharge associated with industrial activity," in part, as discharges from facilities classified as Standard Industrial Classification 5093 (Scrap and Waste Materials).

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

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14. IDNR issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity. The most recent 5-year permit has an effective date of October 1, 2012, and an expiration date of October 1, 2017, with previous 5-year permits having been issued in 1997, 2002 and 2007. The relevant provisions of each permit, as reissued, are substantially the same.

15. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent ("NOI") to IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1, a Stormwater Pollution Prevention Plan ("SWPPP"), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site before the NOI is submitted to IDNR and fully implemented concurrently with operations at the facility.

EPA's General Allegations

16. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Shine Bros. Corp., located at 528 East Park St., Spencer, Iowa 51301 ("Facility"), operating under SIC code 5093.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent's Facility and discharge to the Little Sioux River, including a portion of which that flows into Pete's Pond or the City of Spencer, Iowa's storm sewer system and thereafter to the Little Sioux River. The runoff and drainage from Respondent's Facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

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

19. The Facility 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).

20. The Little Sioux River and Pete's Pond are each a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. 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).

22. 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.

23. After receipt of a NOI from Respondent, dated June 24, 1998, IDNR extended coverage under NPDES General Permit No. 1, Permit Authorization No. IA-3688-3521

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(hereafter "Permit"), to Shine Bros. Corp, for the through October 1, 2002. Upon payment of renewal fees and submission of applications for renewal, IDNR extended the Permit to Respondent during permit cycles from October 1, 2002, through October 1, 2007; from October 1, 2007, through October 1, 2012; and from October 1, 2012, through October 1, 2017. The Permit governs stormwater discharges at the Facility associated with industrial activity.

24. Respondent has operated under the Permit at all times relevant to this Complaint.

25. On January 26, 2006, the IDNR performed a compliance investigation of the Facility ("IDNR 2006 Investigation"), following a citizen's complaint that pollutants originating from the Facility were being discharged into Pete's Pond and the Little Sioux River. The IDNR 2006 Investigation report noted that stormwater from the north and east side of Respondent's property discharges through a City owned park to Pete's Pond, located within the park. The report further stated that the stormwater discharging to the City Park "contains an excessive amount of wire insulation. This insulation appeared to have originated from an insulation stock pile located just inside the Shine Bros. property." The IDNR report required among other things, the Respondent incorporate new storm water management practices into the SWPPP.

26. On July 11, 2011, the IDNR performed an Air Program Investigation ("IDNR 2011 Air Investigation") following the receipt of a citizen complaint of fugitive dust and particulates being released from the Facility. IDNR staff observed wire insulation (sometimes referred to as "fluff") accumulated in the curb and gutter along East Park Street or the Facility's northern property boundary. IDNR staff noted that a rainfall event had occurred on July 10, 2011, and that it appeared that wire insulation had entered the storm sewer along East Park Street which leads to the Little Sioux River. An analysis of a sample collected during the Investigation found concentrations of metals found in the fluff.

27. On December 16, 2011, the IDNR performed a compliance investigation of the perimeter of the Facility ("IDNR 2011 Investigation"). The purpose of the Investigation was to evaluate the Facility following receipt of an anonymous report of polluted stormwater runoff from Respondent's Facility. During the Investigation, the IDNR observed discharges from the Facility's property flowing across the City Park located adjacent to the Facility and into Pete's Pond. The discharges included chopped or shredded insulation and/or fluff leaving Respondent's Facility via stormwater and possibly from airborne particulates. IDNR observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and areas where Respondent's stormwater controls were not properly maintained, such as sections of silt fence not properly anchored into the soil. IDNR staff also observed scrap metal and other debris that had fallen from a berm or had been pushed or spilled over a berm from Respondent's Facility into the Little Sioux River.

28. On April 10, 2012, the EPA performed an inspection of the Facility ("EPA Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the EPA Inspection was to evaluate the Facility's compliance with the CWA, including its management of stormwater at the Facility.

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29. During the EPA Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation ("NOPV") identifying issues that may be violations of Respondent's Permit, including but not limited to, fluff exposed to stormwater and wind on northeast area of the Facility; runoff to the City Park and Pete's Pond from the northeast area of the Facility discharging where it lacks adequate stormwater controls to prevent the discharge of solids and floatables; a need to implement best management practices and structural controls; and a need to update the SWPPP. EPA staff also observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and areas where Respondent's stormwater controls were not properly maintained, such as sections of silt fence not properly anchored into the soil.

30. Included among the documents reviewed during the EPA Inspection and subsequently submitted by the Respondent to the EPA inspector were:

a. Respondent's SWPPP, which was signed, dated and certified in June 1999. Section 8 of the SWPPP indicates that amendments were made in February 2005, January and February 2006, August 2007, October 2008 and December 2011. During or immediately following the EPA Inspection, the Respondent also revised the SWPPP, with an amendment to the SWPPP dated April 10, 2012; and

b. Respondent's Annual Inspection Report forms for inspections conducted pursuant to the SWPPP for an unspecified date in 2009, December 7, 2010, and September 28, 2011.

31. On April 19, 2012, IDNR staff performed a site visit of the perimeter of the Respondent's Facility ("IDNR 2012 Site Visit"). During the April 2012 Site Visit, IDNR staff observed the discharge of stormwater and pollutants from the Facility through the City Park and into Pete's Pond. IDNR staff also observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and the lack of proper maintenance of stormwater controls, such as sections of silt fence not properly anchored into the soil.

32. On April 23, 2013, IDNR staff performed a site visit of the perimeter of the Respondent's Facility ("IDNR April 2013 Site Visit"). During the April 2013 Site Visit, the IDNR observed discharges from the Facility through the City Park to Pete's Pond that were turbid, had a sheen and contained pieces of floating wire insulation. IDNR staff observed the discharge of stormwater and pollutants from the Facility. IDNR staff also observed the lack of stormwater controls along portions of the perimeter of Respondent's Facility adjacent to the City Park and stormwater controls not properly maintained, such as sections of silt fence not properly anchored into the soil.

33. On November 20, 2013, EPA and IDNR staff performed a site visit of the perimeter of the Respondent's Facility ("Joint EPA/IDNR 2013 Site Visit"). During the Joint EPA/IDNR 2013 Site Visit, the EPA and IDNR observed accumulated chopped wire insulation, fluff and other debris in the City's park in the area immediately outside the fence line of the Facility, including in a swale/flow path and culvert between the Facility and Pete's Pond, along the

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southeast bank of Pete's Pond, in and around the outlet from Pete's Pond to the City of Spencer storm sewer, in the City of Spencer storm sewer, and on the banks of the Little Sioux River near the outfall of the City of Spencer storm sewer. IDNR staff also observed actions by staff of the City of Spencer Public Works Department to remove debris causing major blockage of the connection from Pete's Pond to the storm sewer. IDNR staff observed stormwater continuing to trickle through the blockage into the storm sewer from the connection to Pete's Pond. The removed debris included, among other things, fluff, pieces of metal wire, and wire insulation. Analysis of a sample collected by IDNR of the material removed from the blockage in the storm sewer revealed metal concentrations of Antimony, Arsenic, Cadmium, Chromium, Copper, Lead, Molybdenum, Nickel, and Zinc.

EPA's Specific Allegations

Count 1
Discharges of Non-Stormwater Pollutants

34. The allegations stated in Paragraphs 1 through 33 above are re-alleged and incorporated herein by reference.

35. Part III.A. of Respondent's Permit states that, "[a]ll discharges covered by this permit shall be composed entirely of storm water."

36. The EPA Inspection, IDNR Investigations, and EPA and IDNR Site Visits referenced above documented discharges of non-stormwater pollutants to waters of the U.S. in violation of Respondent's Permit. The EPA and IDNR documented non-storm water discharges of pollutants from Respondents Facility to Waters of the U.S., including but not limited to:

a. the discharge of wire insulation "fluff" and other debris into Pete's Pond on April 19, 2012, and April 23, 2013;

b. evidence of previous discharges of non-stormwater pollutants to Pete's Pond during the investigations and site visits on December 16, 2011, April 10 and 19, 2012, and April 23 and November 20, 2013; and

c. evidence of discharges from Pete's Pond to the City storm sewer and the Little Sioux River during the Joint EPA/IDNR 2013 Site Visit on November 20, 2013.

37. Each of Respondent's discharges that was not composed entirely of stormwater is a violation of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

38. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable

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for civil penalties of up to $16,000 per day for each day during which the violation continues, up to a maximum of $177,500.

Count 2
Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP

39. The allegations stated in Paragraphs 1 through 38 above are re-alleged and incorporated herein by reference.

40. Part III.C. of Respondent's Permit requires that a storm water pollution prevention plan shall be developed for each facility covered by the Permit, and that the SWPPP shall: identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility; and describe and ensure the implementation of practices which will be used to reduce pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

41. Part III.C.2.C. of the Permit requires that, after notification by the IDNR that a SWPPP does not meet one or more of the minimum requirements of Part III of the Permit, the permittee must make any changes to the SWPPP required by the IDNR and submit a written certification that the requested change have been made. Unless otherwise provided by the IDNR, the permittee must make such changes and submit the notice within 30 days of receipt of the notice from IDNR.

42. Part III.C.3. of Respondent's Permit requires that the permittee shall amend the SWPPP whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to Waters of the U.S or if the storm water pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

43. Part III.C.4. of Respondent's Permit requires that a site specific SWPPP be developed for each facility covered by the permit, including but not limited to the following minimum components:

a. Part III.C.4.A. – identify all activities and significant material which may potentially be significant pollutant sources;

b. Part.III.C.4.A.(1) – a site map showing an outline of the drainage area of each storm water outfall, each existing structural control measure to reduce pollutants in storm water runoff, and each surface water body; and

c. Part III.C.4.A.(2) – the location and a description of existing structural and non-structural control measures to reduce pollutants in stormwater runoff.

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44. Section 3.1 of Respondent's SWPPP lists significant yard features that are depicted on the Site Map, which is attached as Figure 1 of the SWPPP. Section 3.4 of the SWPPP describes the predicted storm water drainage patterns at the Facility, which are stated to be illustrated in Figure 1.

45. Based on observations and information collected from July 2011 through November 2013 in connection with the EPA Inspection, the IDNR Investigations, and the EPA and IDNR Site Visits described above, Respondent failed to prepare an adequate SWPPP and/or amend the SWPPP after there was a change in design, construction, operation or maintenance at the Facility that had an impact on the potential to discharge pollutants or when controls were determined to be ineffective, as follows:

a. Section 3.1 of the SWPPP and the Site Map attached thereto as Figure 1 failed to identify all outfalls, their drainage areas, and each existing structural control measure serving the Facility, including but not limited to the overflow outfall to the Little Sioux River from the storm water retention basins on the west side of the property, and all outfall points along the fence line separating Respondent's Facility from the City's park, located north of the East Chop Building, that leave the property and discharge to Pete's Pond;

b. Section 3.1 of the SWPPP and the Site Map attached thereto as Figure 1 failed to identify all outfalls from the Facility that discharge to the City's storm sewer from curb inlets on East Park Street; and

c. discharge of shredded wire insulation and other debris from Respondent's Facility to the City Park and Pete's Pond continued despite specific prior notice by IDNR of the Respondent's SWPPP deficiencies, and regardless of amendments made by Respondent noted in Section 8 of the SWPPP, including but not limited amendments in December 2011 and April 2012.

46. Respondent's failure from at least April 2011 through November 2013 to develop an adequate SWPPP, failure to properly amend the SWPPP to accurately reflect changes to the Facility, and failure to amend the SWPPP when stormwater controls were ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity are violations of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

47. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to $16,000 per day for each day during which the violation continues, up to a maximum of $177,500.

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Count 3
Failure to Implement SWPPP

48. The allegations stated in Paragraphs 1 through 47 above are re-alleged and incorporated herein by reference.

49. Parts III. C.4.B. of Respondent's Permit require each facility covered by the Permit to develop a description of storm water management controls appropriate to the facility and implement such controls, including but not limited to the following minimum components:

a. Part III.C.4.B.(3) – Preventative Maintenance, which requires a program that involves inspection and maintenance of storm water management devices as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters;

b. Part III.C.4.B.(4) – Good Housekeeping, which requires the maintenance of a clean, orderly facility;

c. Part III.C.4.B.(6) – Storm Water Management, which requires that the plan contain a narrative consideration of the appropriateness of traditional storm water management practices, and based on an assessment of the potential of various sources at the plant to contribute pollutants to stormwater discharges associated with industrial activity, the plan shall require that measures determined to be reasonable and appropriate are implemented and maintained; and

d. Part III.C.4.B.(8) – Employee Training, which requires that employee training programs inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan; address topics such as spill response, good housekeeping and material management practices; and identify periodic dates for such training.

50. Section 4.0 of Respondent's SWPPP provides Best Management Practices to be implemented by the Facility to reduce the potential of pollutants entering storm water discharges, including but not limited to: Section 4.1, which addresses preventative management controls and traditional stormwater management controls to reduce the potential of pollutants to enter stormwater discharges; Section 4.2, which addresses good housekeeping practices and preventative maintenance procedures to be performed to reduce the potential of contaminants entering stormwater from various activities conducted at the Facility; and Section 4.4, which addresses sediment and erosion controls to prevent excessive sediment and particulate matter from entering stormwater flow, requires silt fencing to be examined weekly and after precipitation events.

51. Section 5.0 of Respondent's SWPPP provides a list of the categories of employees that will be trained, the timing of training (during initial job training and periodic meetings, as needed), and the topics for the employee training.

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52. Based on observations and information collected from April 2011 through November 2013 in connection with the EPA Inspection, the IDNR Investigations, and the EPA and IDNR Site Visits described above, Respondent failed to fully implement the storm water management controls in its SWPPP, and controls that were implemented were ineffective at preventing the discharge of pollutants from the Facility into Waters of the U.S., including the following:

a. areas throughout the Facility where preventative maintenance of stormwater controls was not regularly occurring, including inadequate and/or missing stormwater controls and stormwater controls in disrepair allowing pollutants such as fluff, wire insulation, and other debris from the Facility to enter the City Park and Pete's Pond;

b. areas throughout the Facility where good housekeeping practices were not regularly being implemented, including shredded insulation debris from the chopping areas being carried off-site through stormwater and/or wind deposition, ferrous metal and other material storage along the Little Sioux River without adequate controls to ensure the material was not pushed, spilled, or allowed to fall into the river; and

c. training for Respondent's employees in 2009, 2010 and 2011 addressed spill prevention, clean-up procedures, fire extinguisher and fire prevention, and drum handling, but did not include training on the components and goals of the storm water pollution prevention plan or addresses good housekeeping and material management practices.

53. Respondent's failure from at least April 2011 through November 2013 to develop and implement storm water management controls in the SWPPP to prevent discharges of non-storm water pollutants to Waters of the U.S., including good housekeeping practices, preventative maintenance procedures, best management practices, and employee training, is a violation of the terms and conditions of the Respondent's Permit, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

54. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to $16,000 per day for each day during which the violation continues, up to a maximum of $177,500.

Count 4
Inadequate Visual Inspections and Failure to Address Findings of Inspections

55. The allegations stated in Paragraphs 1 through 54 above are re-alleged and incorporated herein by reference.

56. Part III.C.4.C. of Respondent's Permit requires that qualified personnel inspect designated equipment and the plant area no less than once per year. The Visual Inspection

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requirements identified in Part II.C.4.C., which must be included in the SWPPP pursuant to Part III.C.4. of the Permit, includes, among other things:

a. Part III.C.4.C.(1) a requirement that material handling areas and other potential sources of pollution identified in the SWPPP in accordance with Part III.C.4.A. of the Permit be inspected for evidence of, or the potential for, pollutants entering the drainage system;

b. Part III.C.4.C.(2) a requirement to, based on the results of the inspection, revise the description of potential pollutant sources and pollution prevention measures, as appropriate, and to implement the revisions; and

c. Part III.C.4.C.(3) specific requirements for preparing the report summarizing the scope of the inspection, including the personnel making the inspection, the date(s) of the inspection, major observations relating to implementation of the SWPPP, and actions taken to revise the SWPPP in accordance with Part III.C.4.C.(2).

57. Section 6.0 of the SWPPP developed by Respondent to implement the requirements of its Permit provides instructions and guidance for conducting annual site inspections and preparing the annual inspection report. Instructions in Section 6.0 include, but are not limited to: performing a review that includes a complete site inspection to verify that the site map and potential storm water pollution sources associated with significant materials and facility activities are described accurately in the SWPPP; evaluating structural and non-structural control measures to determine if they accurately address potential pollutant sources and are effective in minimizing the potential for storm water pollution; and visually inspecting equipment needed to implement the SWPPP. The Annual Inspection Report form is attached to the SWPPP at Appendix 5.

58. Section 6.1 of Respondent's SWPPP provides guidance for conducting the annual site inspection, including but not limited to: inspection of storm water drainage areas, retention ponds, and outfalls for evidence of pollutants entering the drainage system; inspection of structural controls to ensure proper operation; determining if practices or controls are in place for each area identified for Good Housekeeping Practices and Preventative Maintenance Procedures in Section 4.2 of the SWPPP and whether those practices and controls are adequate in controlling source pollution at each area; evaluation of whether traditional and structural controls described in the SWPPP are sufficient to minimize storm water pollution; determining if additional controls are necessary; and determining if any changes in the training program are needed.

59. Section 6.2 of Respondent's SWPPP indicates that Page 2 of the Annual Inspection Report should be completed to identify sections in the SWPPP that require revisions, and requires that revisions to the plan must be made within two weeks of the inspection and that implementation of revisions must be made within twelve weeks of the inspection.

60. Based on observations and information collected from April 2011 through November 2013 in connection with the EPA Inspection, the IDNR Investigations, and the EPA and IDNR

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Site Visits described above, Respondent failed to comply with the annual report requirements of its Permit and implement the annual inspection requirements of its SWPPP. The reports for the inspections were limited to identification of physical structures on the Facility premises and included no observations regarding the adequacy of pollution prevention controls, including the following:

a. failed to provide the specific date of the inspection for completion of the annual inspection report for reporting year 2009;

b. failed to document the observation of all Facility outfalls (e.g., drainage area to Pete's Pond) in annual inspection reports for reporting years 2010 and 2011; and

c. failed to indicate in the annual inspection reports for reporting years 2009 through 2011 that any observation had been made for: evidence of, or the potential for, pollutants entering the drainage system; whether the structural controls were in proper operation, or whether traditional and structural controls described in the SWPPP were sufficient to minimize storm water pollution; determining whether practices or controls are in place for each area identified for Good Housekeeping Practices and Preventative Maintenance Procedures in Section 4.2 of the SWPPP and whether those practices and controls are adequate in controlling source pollution at each area; evaluation of whether traditional and structural controls described in the SWPPP were sufficient to minimize storm water pollution; determination if additional controls are necessary; and determination if any changes in the training program were needed.

61. From at least July 2011 through November 2013, the EPA and IDNR documented evidence of persistent and continuing discharges of pollutants in stormwater from Respondent's Facility to Pete's Pond and/or the lack of implementation of effective good housekeeping and pollution prevention practices at the Facility.

62. Respondent's failures from at least April 2011 through November 2013 to conduct effective annual visual inspections, prepare reports documenting its observations, revise the description of potential pollutant sources and pollution prevention measures in its SWPPP following inspections of its Facility, and implement revisions of the pollution prevention measures to address deficiencies are violations of the terms and conditions of the Respondent's Permit, and as such, are violations of Section 301(a), 33 U.S.C. § 1311(a), and the permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

63. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to $16,000 per day for each day during which the violation continues, up to a maximum of $177,500.

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CONSENT AGREEMENT

64. 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.

65. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

66. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in the General and Specific Allegations sections set forth above.

67. 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.

68. 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.

69. 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.

70. 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.

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

72. Prior to executing this CAFO, and upon request of Complainant, Respondent commenced and substantially completed a mitigation project in the City of Spencer park adjacent to Respondent's Facility to facilitate resolution of this matter. The mitigation project is designed to remove fluff and similar material from the City of Spencer park and the shoreline of Pete's Pond in the park to substantially the same condition it was when dedicated to its current use as a park. A summary of the mitigation action is attached to this CAFO as Appendix B.

73. Respondent certifies by signing this CAFO that Respondent commenced and has substantially completed the mitigation project described in Paragraph 72, above.

74. Respondent further certifies by the signing of this CAFO that to the best of its knowledge, Respondent's Facility is in current compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2014-0092, to achieve compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

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75. The effect of settlement described in Paragraph 71 above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraphs 73 and 74 above, of this CAFO.

76. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of $120,000 as set forth in Paragraph 1 of the Final Order.

77. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below 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.

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 a civil penalty of **One Hundred Twenty Thousand Dollars ($120,000)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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 interest 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 or interest.

3. The payment of penalties must reference docket number "CWA-07-2014-0051" and be remitted using one of the payment methods specified in Appendix A to this Order.

4. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by Paragraph 3 of this Order, shall be mailed to:

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

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

5. 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

6. 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

7. Notwithstanding any other provision of this CAFO, the 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.

8. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

9. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

10. This CAFO 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, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

11. Respondent and Complainant shall bear their respective costs and attorneys' fees incurred as a result of this action.

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

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FOR THE COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

_____
Date

_____
Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

_____
Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency
Region 7

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FOR THE RESPONDENT:
SHINE BROS. CORP.

9-26-14
Date

Signature

Toby B. Shine
Name (Print)

Pres
Title

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

_____ _____

Date

Karina Boromeo
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested, to:

Toby Shine, Registered Agent
Shine Bros. Corp
225 10th Avenue S.E.
Spencer, Iowa 51301

and by first class mail to:

Ted Peterson, Supervisor
IDNR Field Office #5
502 East 9th Street
Des Moines, IA 5031

Ken Hessenius, Supervisor
IDNR Field Office #3
1900 North Grand Ave, Suite E17
Spencer, IA 51301

_____ _____
Date Name

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APPENDIX A

Penalty Payment Information for Consent Agreement and Final Order

Complete information regarding making payments to the US EPA may be found at:
http://www.epa.gov/financial/makepayment

For your convenience, the following is a summary of the acceptable payment methods for the civil penalty required to be paid pursuant to the Consent Agreement and Final Order:

1. **Cashier's or Certified Check:** If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

US Postal Service:

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

Common Carriers (Fedex, DHL, UPS):

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

2. **Wire Transfer:** If payment is being made by wire transfer, the wire transfer must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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

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3. **Automated Clearing House (ACH) or Remittance Express (REX)**: If using ACH or REX, payments must indicate the name and docket number of the case and can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format
Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
John Schmid: 202-874-7026
Remittance Express (REX): 1-866-234-5681

4. **On-line Payment:** On-Line Payment is available through the Department of Treasury, and can be accessed using the information below:

www.pay.gov

Enter "sfo 1.1" (without quotation marks) in the SEARCH PUBLIC FORMS field.

You should see the following information as your search result:
Form Number: ***SFO Form Number 1.1***
Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments.

Click the link to open the form, complete the required fields, then click SUBMIT DATA button at the bottom of the form.

Payment Tips
To ensure proper credit please include the following information on your payment:

- Company/remitter's name (as it appears on EPA document)
- Complete address, including city, state, zip
- Remitter's point of contact person and phone number
- EPA document number (case, contract, grant, purchase order, etc.) - NOT the remitter's number
- EPA contact name and phone number, if available
- Reason for payment

Note: It is important to direct payment to the appropriate EPA finance center to ensure your remittance is credited to the proper account. Each finance center has its own unique agency location code, and each U.S. depository has a unique bank routing number.

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APPENDIX B
Shine Bros. Corp. Mitigation Project
Paragraph 72

SITE DESCRIPTION
The Shine Bros. Corp. facility is located at 225 10th Ave, SE, in Spencer, Iowa at a Latitude/Longitude of approximately 43° 8' 9.35" N, 95° 7' 53.62" W. Mitigation activities took place on City Park property containing Pete's Pond, owned by the City of Spencer Iowa, and located directly north and east of the Shine Bros. Corp. facility (hereafter the City Park and pond will be called "City Park").

SUMMARY OF MITIGATION ACTIVITIES
Mitigation activities addressed soils adjacent to (North and East) Shine Bros. Corp. in a shallow swale and adjoining land in the City Park and also in parts of the bank around Pete's Pond also located in the City Park. The shallow swale and adjoining land in the City Park leading into Pete's Pond on City Park is defined as "The Swale." The intermittent 6-12 inch beach area around Pete's Pond is defined as "The Bank."

The mitigation activities were designed to delineate and remove or excavate process wire insulation in "Swale and the Bank" found on the surface of the City Park after it had been built and commissioned as a park.

SCOPE OF MITIGATION ACTIVITIES
The following sections provide a description of the proposed Tasks to complete the Scope of Mitigation. The objective of the work proposed herein is the physical removal of process wire insulation. For the purpose of the mitigation, "process wire insulation" is defined as material that is clearly visible (above or under vegetation) from a distance of 5 feet, and which covers an area greater than 1 square foot (sf).

Site Preparation
(1) Beginning on July 22, 2014, the contractor erected temporary silt fencing, filter socks and hay bales/waddles to mitigate potential stormwater pollution that could result from mitigation activities.

(2) On Monday, July 28, 2014 a preliminary meeting took place with representatives of the City of Spencer, Shine Bros. Corp., the Contractor, and the main sub-contractor, and the Iowa Department of Natural Resources (DNR) to go over the scope of work, efforts to protect or replace trees as needed, and safety measures designed to protect the public during the execution of mitigation activities.

Initial Site Assessment
The initial site assessment consisted of a site inspection of both the Swale and the Bank by the contractor. The horizontal extent of the impacted areas (where there is clearly visible (above or

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under vegetation) from a distance of 5 feet, and which covers an area greater than 1 sf was identified by the contractor.

Initial Field Activities and Mitigation Excavation

On July 28, 2014 the contractor erected temporary orange safety fencing around all areas in which mobile equipment will be working in order to prevent injury to members of the public.

Process wire insulation was removed using truck or trailer-mounted vacuum equipment and earth moving equipment. The vertical extent of the removal process was determined by examining the surface of the excavation area for clearly visible process wire insulation from a distance of 5 feet, and which covers an area greater than 1 sf. If any area did not pass this test then additional excavation took place until the area passed the test. The exact lateral and vertical extent of the excavation was contingent upon observations before and during mitigation activities. Vacuuming via an industrial vac-truck was performed around the base of trees, in areas where excessive pre-existing rubble prohibited access of heavy equipment, and around the perimeter of Pete's Pond. Pre-existing rubble is present under the surface of the park and is a relic of the prior use of the park as a construction debris dump. In limited locations where pre-existing rubble mixed with process wire insulation required additional excavation, up to twelve inches of pre-existing rubble and debris, intermixed with moderate process wire debris was excavated by heavy equipment. A tiller was then used to break up soils immediately surrounding the identified pieces of old pre-existing construction debris and rubble and the soil was removed via vacuum truck. All areas identified as containing process wire insulation were inspected during mitigation activities by the contractor and satisfied the specifications of the work plan.

Process wire insulation and soil was transferred by the Contractor to a temporary storage site on Shine Bros. property where it was sampled and analyzed as required by the local landfill and the DNR. On July 30, 2014, laboratory analysis of excavated soil and process wire insulation were confirmed as non-hazardous waste and approved for local landfill disposal. On July 31, 2014, Shine Bros. began hauling excavated soil and process wire insulation from the stockpile location on Shine Bros. property to the local landfill.

Post Mitigation Activities

When process wire insulation was removed from the Property, clean top soil was imported and backfilled to return the Property to its original grade. On August 28, 2014, all vacuuming, excavation and backfilling activities were completed, and a final Property inspection was completed and approved by Shine Bros. and the Contractor. On Thursday, September 4, 2014, areas requiring backfill were hydroseeded with grass seed. Subsequent heavy rains should provide sufficient water to allow germination.

Reporting

Within 45 days of completion of 2014 field mitigation activities, Shine Bros. Corp. will submit a 2014 Site Mitigation Report (SMR). The 2014 SMR will document activities conducted during the mitigation activity. Within 45 days of completion of 2015 final activities as described in paragraph 66 of the Administrative Order on Consent, Docket Number CWA-07-2014-0092, Shine Bros. Corp. will submit a Final Site SMR to the EPA.

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