

US EPA ARCHIVE DOCUMENT

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Valmont Coatings, Inc.) Docket No. CWA-07-2014-0056
2301 Bridgeport Dr.)
Sioux City, Iowa 51111) CONSENT AGREEMENT/
) FINAL ORDER
Respondent)
)
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 Valmont Coatings, 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, 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 (“CA/FO”) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of 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.

4. Respondent is Valmont Coatings, Inc. a corporation under the laws of Delaware and authorized to conduct business in the State of Iowa. Respondent has a corporate office located at One Valmont Plaza, Omaha, Nebraska 68154, and a steel galvanizing facility located at 2301 Bridgeport Dr., Sioux City, Iowa, 51111.

Statutory and Regulatory Framework

5. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit.

6. 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 CWA, 33 U.S.C. § 1362.

7. Section 402(p) of 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 CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of CWA.

8. 40 C.F.R. § 122.26(b)(14) defines a stormwater discharge that is “associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 34, which includes establishments primarily engaged in fabricating metal products. *See* 40 C.F.R. § 122.26(b)(14)(xi).

9. Pursuant to Section 402(p) of CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

10. 40 C.F.R. §§ 122.26(a)(1)(ii), 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.

11. 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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. IDNR issued a General Permit No. 1 for the discharge of stormwater under the

NPDES program, on October 1, 2012. The permit governs stormwater discharges associated with industrial activity for industrial activities.

FACTUAL BACKGROUND

13. Respondent is a “person,” as defined by Section 502(5) of CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondent was the owner and operator of a facility that conducts zinc galvanizing of steel (“Site”), located at 2301 Bridgeport Dr., Sioux City, Iowa, 51111.

15. Respondent uses the Site to conduct hot-dip zinc galvanization of steel. The Site comprises 1.9 acres, all of which have been developed.

16. The Site is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of CWA, 33 U.S.C. § 1362.

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

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

19. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), is subject to Section 402 of CWA, 33 U.S.C. § 1342.

20. Valmont Coatings applied for, and received a National Pollutant Discharge Elimination System (NPDES) Permit IA-5493-5319. Permit IA-5493-5319, was issued on 9/10/2002. This NPDES general permit governs Respondent’s stormwater discharges that are associated with industrial activity at the Site.

21. On June 19-20, 2013, EPA personnel, under the authority of Section 308(a) of CWA, 33 U.S.C. § 1318(a), inspected the Site to determine Respondent’s compliance with its NPDES permit and the CWA.

ALLEGED VIOLATIONS

Count 1

Inadequate Stormwater Pollution Prevention Plan

22. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

23. Part III.C.4.A. of the NPDES permit requires that the SWPPP provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to stormwater discharges or which may result in the discharge of pollutants during dry weather.

24. During the EPA inspection referenced in Paragraph 21, the inspector noted that the facility's SWPPP did not properly address the potential track out or potential discharge of pickling solution waste to the outdoors.

25. Respondent's alleged failure to develop an adequate SWPPP is a violation of the NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Implement Control Measures

26. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

27. Part III.C.4 .b. of the NPDES permit requires that each facility develop a description of storm water management controls appropriate to the facility and implement such controls

28. During the EPA inspection referenced in Paragraph 21, the inspector noted Respondent's SWPPP recommended methods to be implemented to collect burrs and minimize the activity of the de-burring operations on galvanized steel. The inspector noted that Respondent's de-burring operations were conducted outdoors on a steel table. The inspector also noted that much of Respondent's galvanized waste byproducts and contact cooling water for small galvanized parts were stored or processed outdoors.

29. During the EPA inspection referenced in Paragraph 21, Respondent's SWPPP recommends maintaining a sufficient thickness of aggregate to protect underlying sediment and minimize erosion from high traffic areas. The inspector observed wind eroding the aggregate fines causing fugitive dust to be emitted from the facility grounds. The inspector was informed the last layer of aggregate was added approximately fifteen years prior to the inspection.

30. Part III.C.4 .b.(4). of Respondent's NPDES Permit requires the permittee to develop and implement control measures, including good housekeeping practices.

31. During the EPA inspection referenced in Paragraph 21, the inspector noted zinc fines that were scattered at one of the entryways to the production building and employees sweeping or tracking zinc particulates outdoors. The inspector also noted that employees were tracking out pickling solution that dripped on the production floor during the transfer of steel from the wash tanks to the molten zinc kettle.

32. Respondent's alleged failure to implement control measures is a violation of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

CONSENT AGREEMENT

33. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

34. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA/FO 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 CA/FO.

35. Respondent neither admits nor denies the factual allegations, alleged violations and legal conclusions set forth in this CA/FO.

36. 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 CA/FO.

37. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO 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.

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

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

40. This CA/FO constitutes a full and final settlement of all civil and administrative penalties and claims relating to the facts and CWA violations identified in this CA/FO. Complainant reserves the right to take any enforcement action with respect to any other violations of CWA or any other applicable law.

41. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Site is in compliance with Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

42. The effect of the settlement described in Paragraph 40 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 41 of this CA/FO.

43. Respondent agrees that, in settlement of the facts, violations, and claims alleged in this CA/FO, Respondent shall pay a penalty of \$16,000 as set forth in Paragraph 1 of the Final Order.

44. Respondent understands that failure to pay any portion of the civil penalty on the proper due date 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 Section 309(g) of CWA, 33 U.S.C. § 1319(g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Sixteen Thousand Dollars (\$16,000) within thirty (30) days of the effective date of this Final Order.

2. 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-07-2014-0056.

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

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

Parties Bound

4. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors, 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 CA/FO.

General Provisions

5. EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO if Respondent fails to timely pay the civil penalty and any accrued interest required under paragraph 1-3 of this Final Order, by initiating a judicial or administrative action pursuant to Section 309 of CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

7. 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 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.

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

9. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

10. Respondent's obligations for payment of civil penalties under this CA/FO shall end when Respondent has paid the civil penalties specified hereunder in accordance with paragraphs 1-3 of the Final Order portion of this CA/FO.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
VALMONT COATINGS, INC.

Date

Name (Print) _____

Title _____

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

Karina Borromeo
Regional Judicial Officer

Date