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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

AMERICOLD LOGISTICS, LLC -
LYNDEN

Lynden, Washington

Respondent.

DOCKET NO. CWA-10-2020-0026

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 Americold Logistics, 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” has been 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; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

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 4222 (Refrigerated Warehousing and Storage). 40 C.F.R. § 122.26(b)(14).

3.9. The state of Washington, through the Washington Department of Ecology, is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity.

3.10. The Washington Department of Ecology issued the Industrial Stormwater General Permit for discharges of stormwater associated with industrial activity on December 3, 2014 and the permit became effective on January 2, 2015 (ISGP).

3.11. Section S1.A.1 of the ISGP requires facilities engaged in certain industrial activities, including activities covered under Standard Industrial Classification code 4222, to apply for permit coverage if the facility discharges stormwater to surface waters.

General Allegations

3.12. Respondent is a corporation licensed to do business in the state of Washington 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 this action, Respondent owned and operated the Americold Logistics, LLC Lynden Facility (Facility) located at 406 Second Street in Lynden, Washington.

3.14. The primary operations conducted by Respondent at the Facility include receiving and providing temperature-controlled storage for perishable goods, which are activities

categorized under Standard Industrial Classification code 4222 (Refrigerated Warehousing and Storage).

3.15. The Facility, which was under Respondent's control at all times relevant to this action, discharges stormwater into Fishtrap Creek via four identified discharge points (*i.e.*, discharge points 02A, 03A, 04B, and 05B). 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. Discharge points 02A, 03A, 04B, and 05B are "point sources" as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.17. Fishtrap Creek is a perennial tributary of the Nooksack River, which flows to Bellingham Bay. Thus, Fishtrap 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 ISGP permit number WAR301590. According to the Washington Department of Ecology's Water Quality Permitting and Reporting Information System, Respondent first obtained ISGP coverage on October 21, 2009.

3.19. At times relevant to this Order, Respondent was implementing a draft Stormwater Pollution Prevention Plan (SWPPP) dated December 2013 at the Facility.

3.20. On August 2, 2017, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent's compliance with the ISGP and Sections 301 and 402 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 ISGP including the SWPPP for the Facility. Respondent provided EPA with the draft SWPPP, dated December 2013.

3.22. As part of the inspection, EPA reviewed Respondent's SWPPP, quarterly discharge monitoring reports (DMRs), analytical records, SWPPP training records, annual reports, and electronic work order system records.

Alleged Violations

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

Count 1: Failure to Store Petroleum Products Within Secondary Containment

3.24. Part S3.B.4.b.i.4 of the ISGP requires that the SWPPP include a Spill Prevention and Emergency Cleanup Plan (SPECP) that includes Best Management Practices (BMPs) to prevent spills that contaminate stormwater. As part of the SPECP, Respondent shall, *inter alia*, “[s]tore all chemical liquids, fluids, and petroleum products, on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater.”

3.25. EPA alleges that Respondent violated Part S3.B.4.b.i.4 of the ISGP, by failing to surround containers of petroleum within the “Enviro Bldg”, as marked on the Facility's Site Plan, with a containment berm or dike. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2: Failure to Submit Accurate Discharge Monitoring Reports

3.26. Part S9.A of the ISGP requires Respondent to submit sampling data obtained during each reporting period on a DMR to the Washington Department of Ecology.

3.27. Part S9.D of the ISGP states that if Respondent samples any pollutant at a designated sampling point more frequently than required by the ISGP, then Respondent shall include the results in the calculation and reporting of the data in the Respondent's submitted DMR.

3.28. Part S5.A.3 of the ISGP states that "Permittees sampling more than once per quarter shall average the sample results for each parameter (except pH and "visible oil sheen") and compare the average value to the benchmark to determine if the discharge has exceeded a benchmark value."

3.29. EPA alleges that Respondent violated Part S5.A.3 and Part S9.D of the ISGP, by failing to average multiple sample reports in the DMR submitted in the fourth quarter of 2015. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3: Failure to Collect Quarterly Samples

3.30. Part S4.B.1.a of the ISGP requires Respondent to sample the discharge from each designated location at least once per quarter.

EPA alleges that Respondent violated Part S4.B.1.a of the ISGP, by failing to sample stormwater during the first quarter of 2015. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4: Failure to Submit DMRs

3.31. Part S9.A.2 of the ISGP requires Respondent to submit DMRs to the Washington Department of Ecology by specified deadlines.

3.32. EPA alleges that Respondent violated Part S9.A.2 of the ISGP, by failing to submit DMRs to the Washington Department of Ecology in the fourth quarter of 2016 and the first and second quarters in 2017. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5: Failure to Retain Copies of DMRs On-site

3.33. Part S9.C.1.j of the ISGP requires Respondent to retain copies of all reports required by the permit on-site for a minimum of five years.

3.34. EPA alleges that Respondent violated Part S9.C.1.j of the ISGP, by failing to retain copies of any DMRs on-site. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 6: Failure to Retain Copies of Laboratory Reports On-site

3.35. Part S9.C.1.i. of the ISGP requires Respondent to retain copies of all laboratory reports as described in Part S3.B.4 of the ISGP on-site for a minimum of five years.

3.36. Part S3.B.4 of the ISGP requires Respondent to retain laboratory reports on-site for review and shall ensure that all laboratory reports providing data for all parameters listed in the ISGP.

3.37. EPA alleges that Respondent violated Part S9.C.1.i of the ISGP, by failing to retain a copy of the laboratory report for the third quarter of 2016 on-site. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 7: Failure to Implement Level 3 Corrective Actions

3.40. Part S8.D of the ISGP requires Respondent, following an exceedance of an applicable benchmark value for a single parameter for any three quarters during a calendar year, to complete a Level 3 Corrective Action in accordance with the ISGP as soon as possible, but no later than September 30 of the following year.

3.41. EPA alleges that Respondent violated Part S8.D of the ISGP, by failing to implement a Level 3 Corrective Action following exceedances of benchmark values for zinc and turbidity for three quarters in 2016. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 8: Failure to Sign and Certify the SWPPP

3.42. Part S3.A.6 of the ISGP requires Respondent to sign and certify all SWPPPs for the Facility.

3.43. EPA alleges that Respondent violated Part S3.A.6 of the ISGP, by failing to sign and certify the December 2013 draft SWPPP. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 9: Failure to Identify Potential Sources of Pollutants in the SWPPP

3.44. Part S3.B.2 of the ISGP requires Respondent to include in the SWPPP a Facility assessment that includes an inventory of Facility activities and equipment that contribute to or have the potential to contribute any pollutants to stormwater.

3.45. EPA alleges that Respondent violated Part S3.B.2 of the ISGP, by failing to identify in the SWPPP Facility assessment galvanized equipment or vehicular traffic that have the potential to contribute pollutants to stormwater. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 10: Failure to Identify Parameters for Analysis and Holding Times

3.46. Part S3.B.5.g of the ISGP requires Respondent to include in the SWPPP sampling plan parameters for analysis and holding times.

3.47. EPA alleges that Respondent violated Part S3.B.5.g of the ISGP, by failing to identify in the SWPPP sampling plan several parameters for analysis and holding times.

Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 11: Failure to Meet Sampling Holding Time

3.48. Part S4.C of the ISGP requires Respondent to ensure that analytical methods used to meet the sampling requirements in the ISGP conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 C.F.R. Part 136. 40 C.F.R. § 136.3 requires a holding time not to exceed 15 minutes for pH analyses.

3.49. EPA alleges that Respondent violated Part S4.C of the ISGP, by failing to follow the proper analytical methods for samples assessing pH. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 12: Failure to Submit Annual Reports

3.50. Part S9.B.1 of the ISGP requires Respondent to submit a complete and accurate Annual Report to the Washington Department of Ecology no later than May 15 of each year.

3.51. EPA alleges that Respondent violated Part S9.B.1 of the ISGP, by failing to submit an Annual Report to the Washington Department of Ecology for the years 2015 and 2016. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 13: Failure to Retain Records of Monthly Inspections

3.52. Part S7.A.1 of the ISGP requires Respondent to conduct and document visual inspections of the Facility each month.

3.53. Part S7.C.1 of the ISGP requires Respondent to record the results of each monthly inspection and keep the records on-site.

3.54. EPA alleges that Respondent violated Part S7.C.1 of the ISGP, by failing to retain records of the monthly inspections on-site from September 2015 – August 2017. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 14: Failure to Provide Annual SWPPP Training

3.55. Part S3.B.4.b.i.5.c of the ISGP requires Respondent to provide SWPPP training to employees annually, at a minimum.

3.56. EPA alleges that Respondent violated Part S3.B.4.b.i.5.c of the ISGP, by failing to provide SWPPP training to employees in 2015. Violations of the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 15: Failure to Properly Describe Business Hours in SWPPP

3.57. Part S3.B.2.a.ii of the ISGP requires Respondent to include in the SWPPP a Facility description that includes regular business hours and seasonal variations in business hours or industrial activities.

3.58. EPA alleges that Respondent violated Part S3.B.2.a.ii of the ISGP, by failing to properly list the Facility business hours in the SWPPP. Violations of the ISGP 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 \$41,500.

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.

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

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 the violation(s) alleged in Part III above other than those alleged violations that will be corrected in accordance with Administrative Order on Consent, Docket Number: CWA-10-2020-0027.

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:

1/28/2020

FOR RESPONDENT:




JAMES SNYDER
Chief Legal Officer
Americold Logistics, LLC

DATED:

2/27/2020

FOR COMPLAINANT:



EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

AMERICOLD LOGISTICS, LLC -
LYNDEN

Lynden, Washington

Respondent.

DOCKET NO. CWA-10-2020-0026

FINAL ORDER

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

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this 5th day of March, 2020.

A handwritten signature in black ink, appearing to read "Richard Mednick", written over a horizontal line.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Americold Logistics, LLC - Lynden, Docket No.: CWA-10-2020-0026**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:


Patrick B. Johnson, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
(206) 553-6905
Johnson.Patrick@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

James Snyder, Chief Legal Officer
Americold Logistics, LLC
10 Glenlake Parkway
Suite 600, South Tower
Atlanta, Georgia 30328

John C. Spinrad, Partner
Arnall Golden Gregory LLP
171 17th Street N.W., Suite 2100
Atlanta, Georgia 30363
(404) 873-8666
John.Spinrad@AGG.com

DATED this 9 day of March, 2020.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10