

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
:
MR. MULCH, LLC : U.S. EPA Docket No.: CWA-03-2024-0088
22288 COVERDALE ROAD :
SEAFORD, DELAWARE 18873, :
:
Respondent. : Expedited Settlement Agreement and Final
: Order
:
:
:

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (“Agreement”) is entered into by the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and Mr. Mulch, LLC (“Mr. Mulch” or “Respondent”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g) (“CWA”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.
3. The U.S. Environmental Protection Agency, Region 3 (“EPA”) has jurisdiction over this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.1(a)(6) and 22.4 of the Consolidated Rules of Practice.
4. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and by email sent on March 5, 2024, EPA notified the Delaware Department of Natural Resources and Environmental Control (“DNREC”) of EPA’s intent to commence this administrative action

against Respondent in response to the violations of the CWA that are alleged herein.

5. In signing this Agreement, the Respondent: admits the jurisdictional allegations in this Agreement; neither admits nor denies the specific factual allegations in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; agrees to bear its own costs and attorney's fees; and agrees not to deduct for federal tax purposes the civil penalty assessed in this Agreement and Final Order.
6. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), this Agreement shall be issued only after a 40-day public notice and comment period is concluded. This Agreement will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.
7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System ("NPDES") program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with Sections 301, 302, 306, 307, 318, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
9. "Pollutant" is defined as "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(6).
10. "Discharge of a pollutant" means "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source.'" 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(12).
11. "Storm water" is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
12. "Storm water discharge associated with industrial activity" means "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"

and “includes, but is not limited to, storm water discharges from...material handling sites; refuse sites; sites used for the application or disposal of process waste waters...; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products.” 40 C.F.R. § 122.26(b)(14).

13. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26, require facilities discharging stormwater associated with industrial activity to obtain a permit. Under 40 C.F.R. 122.26(a)(6)(i), “[a]ll storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the United States, with each discharger to the non-municipal conveyance a co-permittee to that permit.”
14. 40 C.F.R. § 122.26(g) outlines the conditional exclusions for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions of 40 C.F.R. § 122.26(g)(1) – (4).
15. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the State of Delaware, through the DNREC, is authorized by EPA to administer the NPDES program in the State of Delaware.
16. The State of Delaware, through DNREC, has incorporated the NPDES Permit program requirements of the CWA, 33 U.S.C. § 1342, into its Clean Streams Law, as amended, 35 P.S. § 691.1 et seq.
17. At all times relevant to the allegations described in this Expedited Settlement Agreement, Respondent Mr. Mulch was a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and an “owner or operator” of a facility where “industrial activities” are taking place,” as those terms are described in federal regulations at 40 C.F.R. §§ 122.2 and 122.26. The facility is located at 22288 Coverdale Road Seaford, DE 19973 (“Facility”).
18. The Facility stores and shreds wood debris to manufacture mulch, which it colors and stores in piles for distribution and sale.
19. Operations at the Facility, including industrial activities, were observed to occur mostly outdoors and exposed to stormwater. These activities included the manufacturing of wood mulch products, including shredding wood debris to create mulch, coloring of mulch, and storage of mulch, which are regulated under the NPDES general permit for discharges of stormwater associated with industrial activities. 40 C.F.R. § 122.26(b)(14)(ii).

20. On September 2, 2021, representatives of EPA compliance inspection team conducted an inspection of the Facility (“Inspection”), pursuant to Section 308 of the Act, 33 U.S.C. § 1318.
21. As observed by EPA, the Respondent’s outdoor industrial activities noted in paragraphs 18-19 were exposed to storm water.
22. Storm water runoff from the Facility discharges into an unnamed tributary to the Nanticoke River, which is a water of the United States (“WOTUS”) within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
23. Respondent does not have a NPDES permit from DNREC to discharge storm water from the Facility into any waters of the United States.
24. On at least September 2, 2021, evidence of mulch and wood debris was observed to have migrated offsite, and proximity to a WOTUS show the Respondent discharged storm water from the Facility into waters of the United States without authorization by any permit issued pursuant to the CWA, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.
25. On at least the date of the Inspection, Respondent was in violation of 40 C.F.R. §122.26(a)(6)(i) by not having permit coverage for discharging industrial stormwater.
26. The Facility’s exposed outdoor operations did not meet regulatory exemption criteria of 40 C.F.R. §122.26(g)(1) through (4).
27. In failing to comply with 40 C.F.R. §122.26(a)(6)(i), Respondent violated Section 301(a) of the CWA, 33 U.S.C. §1311(a) on at least the date of the Inspection, and is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).
28. In settlement of EPA’s claims for civil penalties for the violations alleged in this Agreement, Respondent consents to the assessment of a civil penalty in the amount of TEN THOUSAND dollars (\$10,000), which Respondent shall be liable to pay in accordance with the terms set forth below. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). These factors were applied to the particular facts and circumstances of this case with specific reference to the EPA Memorandum titled, “Revised Expedited Settlement Agreement Program Pilot for Industrial Stormwater Non-Filers Under the Clean Water Act,” by Rosemarie Kelly, dated September 30, 2019 (extended through September 30, 2024), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
29. Respondent agrees that, within 30 days of the effective date of this Agreement, Respondent shall make a payment of **\$10,000 to “United States Treasury”** with the case name, address and docket number of this Agreement (CWA-03-2024-0088), for the amount

specified above. Respondent shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

30. Within 24 hours of payment, the Respondent shall also send proof of payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer), by electronic mail to:

Shaner McAleer (3ED33)
mcaleer.shane@epa.gov

and,

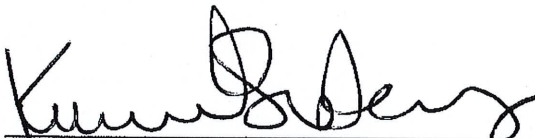
Regional Hearing Clerk (3RC00)
R3_Hearing_Clerk@epa.gov.

31. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that (1) he or she has corrected the alleged violations, and (2) any documentation or information that he or she provided to EPA was true and accurate.
32. This Agreement and the attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
33. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CWA, the CWA regulations promulgated, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
34. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.
35. This Agreement is binding on the parties signing below and is effective 30 days after the date on which it is filed, together with a final order, with the Regional Hearing Clerk, pursuant to the Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).
36. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Mr. Mulch.

- 37. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: mcaleer.shane@epa.gov (for Complainant), and kadams@melvinjoseph.com (for Respondent).
- 38. Pursuant to 40 C.F.R. § 22.45(b), this Agreement shall be issued only after a 40-day public notice and comment period is concluded. This Agreement will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.
- 39. By signing this Agreement, Respondent acknowledges that this Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
- 40. Payment of the civil penalty is due and payable immediately upon the effective date of this Expedited Settlement Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Expedited Settlement Agreement and Final Order, with a date stamp indicating the date on which the Expedited Settlement Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Expedited Settlement Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
- 41. Failure by Respondent to pay the penalty assessed by this Agreement and Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9)(B) of the Act, 33 U.S.C. § 1319(g)(9)(B). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

For Respondent: Mr. Mulch, LLC

Date: 4-12-24

By: 
Ken Adams
Owner

For Complainant:

After reviewing the Expedited Settlement Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Expedited Settlement Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: **KAREN MELVIN** Digitally signed by KAREN
MELVIN
Date: 2024.07.08 07:10:05 -04'00'

[Digital Signature and Date]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region 3
Complainant