



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
INDUSTRIAL STORMWATER ESA

IN THE MATTER OF:)
SOUTH CAROLINA POLE AND PILING, INC.)
Respondent)
DOCKET NO.: CWA-04-2024-1001(b)
Expedited Settlement Agreement and Final Order
Pursuant to Clean Water Act Section 309(g)(2)(A)
NPDES Permit No. Unpermitted

The undersigned representatives of the United States Environmental Protection Agency (EPA) and South Carolina Pole and Piling, Inc. (Respondent) enter into this Expedited Settlement Agreement (ESA or Agreement) to resolve Respondent's civil penalty liability for allegedly discharging industrial stormwater without a permit at the Site.

Based on information obtained during the EPA inspection, the EPA finds that: (1) Respondent, who is the operator and operator of the Site, discharged industrial stormwater from the Site without authorization by any permit issued pursuant to the Clean Water Act (Act) in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), as further described in the enclosed "Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form" (Alleged Violations Form) (Enc. A); (2) Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5). The Alleged Violations Form is hereby incorporated into this Agreement by reference.

The EPA also finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Respondent neither admits nor denies the factual allegations alleged in the Alleged Violations Form (Enc. A).

The EPA is authorized to enter into this Agreement under the authority vested in the Administrator by Section 309(g) of the Act, 33 U.S.C. § 1319(g), and by §§ 40 C.F.R. § 22.13(b) and 22.18.

Respondent consents to the assessment of a civil penalty and agrees to pay \$20,000 in settlement of the alleged violations. Respondent waives the right to: (1) contest the allegations in the Alleged Violations Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); (3) appeal the Final

Order; and (4) judicial review pursuant to CWA § 309 (g)(8), 33 U.S.C. § 1319(g)(8). The civil penalty will be due within thirty (30) days of the Effective Date of this Expedited Settlement Agreement and Final Order and shall be made in accordance with the attached Expedited Settlement Agreement Payment Instructions (Payment Instructions (Enc. B)) incorporated herein by reference. Respondent agrees to bear its own costs and attorney's fees related to this ESA.

Failure by Respondent to pay the penalty assessed by this ESA 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. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of South Carolina was provided a prior opportunity to consult with the EPA regarding this matter.

By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Alleged Violations Form have been corrected, and Respondent has submitted true and accurate documentation to the EPA of such correction; and (2) consistent with Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

This Agreement, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations of Section 301(a) of the Clean Water Act alleged in the Alleged Violations Form. This Agreement does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law or to issue an administrative compliance order, e.g., for any uncorrected violations listed in the Alleged Violations Form. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any

regulation, order, or permit issued pursuant to the Act.

If Respondent does not sign and return this ESA as presented within 30 days of the date of its receipt, or within an extension timeframe approved by the EPA, this proposed ESA is withdrawn without prejudice to the EPA's ability to file any other enforcement action for the violations identified in the Alleged Violations Form.

In accordance with Section 309(g)(1) of the Act, 33 U.S.C. 1319(g)(1), and 40 C.F.R. § 22.38, prior to requesting that the EPA Regional Judicial Officer issue the Final Order, the EPA will provide a copy of the Agreement to the State of South Carolina for the purposes of consultation with South Carolina on the appropriateness of this Agreement. In accordance with Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on the proposed issuance of this Agreement prior to issuance of the Final Order.

The parties consent to service of this ESA and Final Order by e-mail to the e-mail addresses provided by the parties in the Certificate of Service.

This Agreement is binding on the parties signing below. Each person signing this Agreement certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA and Final Order are effective the date of filing with the Regional Hearing Clerk. Once the ESA is signed by the Regional Judicial Officer, the original ESA will be filed with the Regional Hearing Clerk. A copy of the filed ESA will be emailed to Respondent.

Attachments:

1. Alleged Violations Form (Enc. A)
2. Payment Instructions (Enc. B)
3. Certificate of Service

APPROVED BY RESPONDENT:

Name (print): Will Colner

Title (print): VP

Signature:  Date: 7-16-24

APPROVED BY THE EPA:

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division

FINAL ORDER

Having determined that this Agreement is authorized by law, the foregoing Expedited Settlement Agreement is hereby incorporated into the Final Order.

IT IS SO ORDERED:

Tanya Floyd
Regional Judicial Officer

ENCLOSURE A
Industrial Stormwater Non-Filer Inspection
Findings and Alleged Violations Form

1. To accomplish the objective of the Clean Water Act (CWA), as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into navigable waters except as in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the U.S. Environmental Protection Agency or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the state of South Carolina through the South Carolina Department of Health and Environmental Control (SCDHEC) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.
3. South Carolina Pole and Piling, Inc. (Respondent) owns and operates a Timber Products facility located at 430 Bozard Mill Road, Leesville, South Carolina 29070 (Facility). The Facility is identified by Standard Industrial Classification (SIC) Code 2411.
4. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), an NPDES permit is required for "a [stormwater] discharge associated with industrial activity."
5. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), "[f]acilities classified within Standard Industrial Classification 24... Industry Groups 241 through 249..." which would include SIC Code 2411, are engaging in "industrial activity" for purposes of 40 C.F.R. 122.26(b)(14).
6. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), an NPDES permit is required for "a [storm water] discharge associated with industrial activity," which "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 at an industrial plant." 40 C.F.R. § 122.26(b)(14). Further, under 40 C.F.R. § 122.26(b)(14)(ii), "[t]he following categories of facilities are considered to be engaging in 'industrial activity' for purposes of paragraph (b)(14): ... Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are ... log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 C.F.R. § 122.27(b)(2)-(3)."
7. The Facility¹ is an establishment primarily engaged in cutting timber and in producing rough, round, hewn, or riven primary forest or wood raw materials, and belongs to Industry Group 2411 (Logging),

¹Respondent characterizes itself as a "supplier of quality green or kiln dried, untreated, finished poles to the wood treating industry." www.scpole.com

which is a more specific subcategory of Standard Industrial Classification 24 (Lumber and Wood Products, Except Furniture).

8. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), and its implementing regulations at 40 C.F.R. §122.26(b)(14)(vi), require that an industrial facility discharging stormwater into navigable waters of the United States must obtain an NPDES permit.
9. On August 10, 2023, representatives of the EPA performed a Compliance Stormwater Evaluation Inspection at the Facility to evaluate the Respondent's compliance with the requirements of Sections 301(a) of the CWA, 33 U.S.C. § 1311; and the regulations promulgated thereunder at 40 C.F.R. § 122.26.
10. On October 11, 2023, the EPA issued an Inspection Report to the Respondent. The Inspection Report documented that during the August 10, 2023, Compliance Stormwater Evaluation Inspection, the EPA inspectors observed the following:
 - A. The Facility had outdoor industrial processes, including but not limited to, loading, and unloading operations, material storage, and waste material storage activities with potential exposure and contribution to stormwater contamination.
 - B. The Facility had stormwater runoff which discharges offsite into an unnamed tributary of Lick Creek. The flow pattern and drainage pathway from the Site to Lick Creek were subsequently verified by a desk assessment using Google Earth.
 - C. Respondent's industrial activity at the Facility, which included timber processing, is classified under SIC Code 2411. Facilities operating under SIC Code 2411, industrial Sector A, are required to obtain a general NPDES permit coverage for their stormwater discharges.
 - D. The Respondent did not have an NPDES permit at the time of the Compliance Stormwater Evaluation Inspection and did not submit a Notice of Intent for permit coverage until January 23, 2024, after the violations alleged in this action occurred.
11. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), and its implementing regulations at 40 C.F.R. §122.26(b)(14)(vi), as referenced above, require that an industrial facility discharging stormwater into navigable waters of the United States must obtain an NPDES permit. In the EPA Supplemental Guidance to the 1995 Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements², 0.5 inches during a 24-hour period is used as the general benchmark for likely stormwater runoff to result in a discharge. According to rain data available from the National Weather Service³ for this area, 58 months during the period of August 2018 to August 2023 had one or more daily rain events greater than 0.5 inches. Due to the hydrology of the Facility in which significant portions of the site are covered in tightly packed material, the EPA has determined that from August 2018 to August 2023, stormwater associated with Respondent's industrial activities discharged offsite into an unnamed tributary of Lick Creek. The unnamed tributary of Lick Creek drains into Lick Creek, which drains to the northwest where it joins West Creek. West Creek flows to

²<https://www.epa.gov/sites/default/files/2016-09/documents/industrialswpenaltyguidance.pdf>.

³www.weather.gov/unr/precipitation-past.

the northwest and then joins Clouds Creek. Clouds Creek flows to the north and into a southern arm of Lake Murray. The confluence of Clouds Creek and Lake Murray is situated approximately 9.5 miles from the Facility.

12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”
13. Lake Murray is a traditionally navigable water of the United States, and a “navigable water,” or “water of the United States,” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 120.2(a).
14. The unnamed tributary of Lick Creek, and Lick Creek, itself, being relatively permanent or continuously flowing tributaries to Lake Murray, are also “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 120.2(a).
15. Respondent has violated Sections 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater from the Facility to waters of the United States without proper authorization.
16. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b), and in accordance with the EPA’s September 8, 2016, Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements, the EPA is assessing a penalty of \$20,000 for the above-mentioned violations.