

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

In re the Matter of:

San Pedro Forklift

2418 E. Sepulveda Boulevard
Long Beach, California 90810

Respondent.

) Docket No.: CWA-09-2009
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)

) **COMPLAINT, NOTICE OF PROPOSED
) PENALTY, AND NOTICE OF
) OPPORTUNITY FOR HEARING**
)
)

) Proceedings Under Section 309(g)(2)(B) of the
) Clean Water Act, as amended, 33 U.S.C. §
) 1319(g)(2)(B)
)

COMPLAINT

Statutory Authority

1. The United States Environmental Protection Agency (“EPA”) issues this Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g). The authority to take action under Section 309(g) of the Act, 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 9, who in turn has delegated it to the Director of the Water Division of EPA, Region 9, who hereby issues this Complaint.

Statutory and Regulatory Framework

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States unless it complies with the Act, including Section 402, 33 U.S.C. § 1342.

3. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (“NPDES”) program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA’s implementing regulations at 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States.

5. Trucking of recycled materials falls under Standard Industrial Classification (SIC) Code 4213 (Trucking) and, pursuant to 40 C.F.R. § 122.26(b)(14)(viii), is an industrial activity subject to the discharge and permitting requirements under Section 402(p) of the Act, 33 U.S.C. § 1342(p).

6. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations, authorize EPA to, *inter alia*, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.

7. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activities which may result in the discharge of storm water from the industrial activity.

8. The State of California has an EPA-approved NPDES program, and issues permits, including storm water permits, through its State Water Resources Control Board (“State Board”) and nine Regional Water Quality Control Boards (“Regional Boards”). On April 17, 1997, the State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ

(“General Permit”), the current statewide NPDES permit for storm water discharges associated with industrial activity.

9. All facility operators seeking coverage under the General Permit must submit a *Notice of Intent to Comply with the Terms of the General Permit for Storm Water Discharges Associated with Industrial Activity* (“NOI”) to the State Board fourteen (14) days prior to commencing industrial operations. A facility operator that does not submit an NOI must submit an application for an individual NPDES permit. (General Permit, Order Provision E(1), pg. 6 and Attachment 3 to the General Permit.)

10. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (“SWPPP”) prior to discharging storm water from their industrial operations. (General Permit, Order Section A(1)(a), p. 11.) The SWPPP includes obligations to identify sources of industrial storm water pollution and to identify site-specific best management practices (“BMPs”). The SWPPP must include, *inter alia*, a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source. (General Permit, Order Section A(8), pg. 17.)

11. The General Permit requires facility operators to reduce or prevent pollutants associated with industrial activity in their storm water discharges and authorized non-storm water discharges by implementing best available technology economically achievable (“BAT”) for toxic and non-conventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. Development and implementation of a SWPPP that complies with the General Permit and that includes BMPs that achieve BAT/BCT constitute compliance with this requirement. (General Permit, Order Provision B.3, pg. 4.)

12. The General Permit requires facility operators to include a clear and understandable site map in the SWPPP that includes, *inter alia*, an identification of the location of municipal storm drain inlets, direction of storm water flow, and areas of industrial activity, including the location

of fueling areas, material handling and processing areas, waste treatment and disposal areas, and other areas of industrial activity which are potential pollutant sources. (General Permit, Order Section A(4), pp. 12-14.)

13. The General Permit requires facility operators to include a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source. (General Permit, Order Section A(8), pp. 17-21.)

14. The General Permit requires facility operators, that began operations after October 1, 1992, to develop and implement a monitoring program, by the time the industrial activities begin. (General Permit, Order Section B(1)(a), pp. 24-25.)

15. The General Permit requires all facility operators to monitor for total suspended solids, specific conductivity, Ph, and total organic carbon (TOC) (oil and grease may be substituted for TOC). (General Permit, Order Section (B(5)(c)(i), pg. 27.)

Factual Background

16. San Pedro Forklift (hereinafter “Respondent”) is a corporation licensed to do business in California, and is thus a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

17. Respondent operates a facility within the Port of Los Angeles located at 2418 E. Sepulveda Boulevard in Long Beach, CA (Facility). Respondent has operated this facility since October 1, 1999. The facility is primarily engaged in trucking of recycled materials, an activity categorized under SIC 4213.

18. Data from the Torrance Airport Weather Monitoring Station, located approximately six miles northeast of the Facility, indicate there were 57 days with more than 0.1 inches of rainfall at the Facility from October 1, 2004 through December 24, 2007.

19. Storm water runoff at the Facility discharges through two storm drains located at the western side of the Facility to Los Angeles Harbor (Harbor) through the City of Los Angeles’ municipal separate storm sewer system (MS4). The Facility’s storm drains and the City of Los

Angeles' MS4 are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

20. The Los Angeles Inner Harbor has been listed as impaired for copper, zinc, PCBs, DDT, and sediment toxicity in the State's 2006 list required by Clean Water Act §303(d).

21. The Los Angeles Harbor (including the Inner Harbor) is considered Essential Fish Habitat for two Fishery Management Plans developed by the National Marine Fisheries Service ("NMFS") pursuant to the federal Magnuson-Stevens Fishery Conservation and Management Act, Public Law 94-265 (as amended October 11, 1996): the Coastal Pelagic Species Fishery Management Plan ("FMP"), 64 Fed. Reg. 69888 (Dec. 15, 1999) and the Pacific Coast Groundfish FMP, 71 Fed. Reg. 27408 (May 11, 2006).

22. The "Summary of Sediment Quality Conditions in the Port of Los Angeles," dated May 2009, pg. 36 prepared by Weston Solutions for the Port of Los Angeles Environmental Management, found "Sediment toxicity has been observed in...Los Angeles/Long Beach Inner and Outer Harbors..."¹

23. On May 17, 2007, EPA Region 9 representatives inspected the Facility to evaluate Respondent's compliance with the General Permit and found Respondent had not submitted an NOI to the State Board or otherwise sought or received NPDES permit coverage for discharges from the Facility. The inspectors also observed sources of pollutants (oil and batteries, 55 gallon drums, obsolete equipment stored outdoors with no cover or containment) exposed to storm water, poor housekeeping (trash in the yard) and large pavement stains, indicating prior spills that were not properly addressed.

24. On November 9, 2007, EPA issued Respondent a Findings of Violation and Order for

¹ <http://www.portoflosangeles.org/DOC/WRAP Appendix B1.pdf>

Compliance, EPA Docket No. CWA 309(a)-08-016 (the “2007 Order”), which required Respondent to obtain General Permit coverage and bring the Facility into compliance with the General Permit by, *inter alia*, implementing BMPs and developing a SWPPP and a Monitoring Plan.

25. On or around December 12, 2007, Respondent submitted an NOI to the State Board seeking coverage under the General Permit for the Facility. On December 24, 2007, the State Board granted Respondent coverage under the General Permit and assigned Waste Discharge Identification (“WDID”) Number 419I021360 for the Facility.

26. On February 8, 2008, Respondent provided EPA with a copy of the Facility’s SWPPP in response to the 2007 Order.

27. On February 8, 2008, Respondent provided EPA with a “Storm Water Monitoring Plan” for the Facility, in response to the November 2007 Order.

Findings of Violation

Count 1

Discharges Without an NPDES Permit

28. The facts stated in paragraphs 1 through 26 are re-alleged and incorporated herein.

29. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States unless it complies with the Act, including Section 402, 33 U.S.C. § 1342.

30. On or around December 12, 2007, Respondent submitted an NOI to the State Board seeking coverage under the General Permit for the Facility. On December 24, 2007, the State Board granted Respondent coverage under the General Permit and assigned Waste Discharge Identification (“WDID”) Number 419I021360 for the Facility. Prior to December 24, 2007,

discharges from Respondent's industrial activities at the Facility were not authorized by the General Permit or an individual NPDES permit.

31. Respondent is a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

32. Storm water runoff from the Facility contains "pollutants," including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

33. Storm water runoff from the Facility that discharges to the Los Angeles Inner Harbor, the Los Angeles Harbor, and the Pacific Ocean, is a "storm water discharge associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14).

34. The Los Angeles Inner Harbor, the Los Angeles Harbor, and the Pacific Ocean are "waters of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA's implementing regulations at 40 C.F.R. § 122.2.

35. Data from the nearest Torrance Municipal Airport Weather Monitoring Station indicate there were at least 57 days with 0.1 inches or more of rainfall at the Facility from October 1, 2004 to December 24, 2007. Upon information and belief, each of the 57 rainfall events generated storm water associated with industrial activity at the Facility that discharged into and added pollutants to the Inner Harbor, Los Angeles Harbor, and the Pacific Ocean.

36. Each storm water discharge from the Facility between October 1, 2004 and December 24, 2007, was an unauthorized discharge to waters of the United States and, together, the discharges constitute no fewer than 57 days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Count 2

Failure to Submit an NOI for General Permit Coverage

37. The facts stated in paragraphs 1 through 35 are re-alleged and incorporated herein.

38. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, require dischargers of storm water associated with industrial activity to submit information in an application for an NPDES permit prior to commencing industrial activity.

39. Respondent's failure to submit an NOI for coverage under the General Permit or an individual NPDES permit, before commencing industrial activities at the Facility constitutes a violation of Section 308(a) of the Act, 33 U.S.C. § 1308(a), and 40 C.F.R. § 122.21.

Count 3

Failure to Comply with General Permit Requirements To Develop an Adequate SWPPP and Monitoring Program

40. The facts stated in Paragraphs 1 through 38 are re-alleged and incorporated herein.

41. The General Permit (General Permit, Order Section A, pp. 11-23) requires Respondent to develop and implement an adequate SWPPP prior to commencing industrial operations.

42. On November 9, 2007, EPA issued an Administrative Order, which required, *inter alia*, that Respondent submit a SWPPP in accordance with the General Permit (General Permit, Order Section A, pp. 11-23).

43. On February 8, 2008, Respondent provided EPA with a copy of the Facility's SWPPP in response to the 2007 Order.

44. Upon information and belief, EPA alleges that Respondent's failure to develop and implement an adequate SWPPP for operations at the Facility between December 24, 2007 and February 8, 2008, constitutes no fewer than 46 days of violation of the General Permit (General Permit Order Sections A(4), pp. 12-14, and A(8), pp. 17-21), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

45. The General Permit (General Permit, Order Section B(1)(a), pp. 24-25) requires facility operators to develop a site-specific written monitoring program prior to commencing industrial operations and to have the written monitoring program readily available for review by inspectors and employees.

46. On November 9, 2007, EPA issued an Administrative Order, which required, *inter alia*, that Respondent submit a written monitoring program for the Facility in accordance with the General Permit (General Permit, Order Section B(1)(a), pp. 24-25).

47. On February 8, 2008, in response to the November 2007 Order, Respondent submitted a “Storm Water Monitoring Plan” for the Facility to EPA.

48. Respondent’s failure to develop an adequate written monitoring program between December 24, 2007 and February 8, 2008 constitutes no fewer than 46 days of violation of the General Permit (General Permit, Order Section B(1)(a), pp. 24-25), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

NOTICE OF PROPOSED ORDER ASSESSING PENALTIES

49. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of 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 the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the administrative assessment of civil penalties may not exceed \$16,000 per day for each day during which the violation continues, up to a maximum penalty of \$177,500. *See also* 73 Fed. Reg. 75340 (December 11, 2008) (2008 Penalty Inflation Rule).

50. The proposed penalty is based upon the facts stated in this Complaint, the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violation, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require.

51. The nature, circumstances, extent, and gravity of the violations described above are significant. Respondent operated the Facility without General Permit coverage since it began industrial activity at the Facility on October 1, 1999, until December 24, 2007, and for at least

the five years prior to the filing of this Complaint has not maintained adequate storm water controls at the Facility. The absence of adequate storm water controls resulted in the discharge of pollutants in storm water to waters of the United States. During the inspections, EPA observed materials and storm water pollutant sources at the Facility (oil and batteries, 55 gallon drums, obsolete equipment stored outdoors with no cover or containment exposed to storm water, poor housekeeping and large pavement stains). Given the condition of the facility, EPA believes it is likely that storm water discharges from this facility contained oil and metals. The presence of metals in storm water results in sediment toxicity which is harmful to aquatic species and other wildlife. As previously stated, the Inner Harbor has been listed as impaired for copper, zinc, PCBs, DDT, and sediment toxicity. These pollutants may adversely impact many species of fish found in the Los Angeles Harbor, which is recognized as Essential Fish Habitat.

52. By avoiding or delaying the costs necessary to comply with the Act, Respondent has realized economic benefit as a result of the violations alleged above.

53. Based on the foregoing Findings of Violations, and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a civil administrative penalty against Respondent in an amount not to exceed \$177,500, the statutory maximum penalty allowed under 33 U.S.C. § 1319(g)(2)(B), as amended by the Civil Monetary Penalty Inflation Act, and as reflected in 40 C.F.R. § 19.4.

54. EPA has consulted with the State of California regarding this Complaint and its intention to seek civil administrative penalties against Respondent.

55. Neither assessment nor payment of a civil administrative penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the CWA, and with any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

56. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. The answer shall be filed with the following:

Regional Hearing Clerk
U.S. EPA Region 9 (ORC-1)
75 Hawthorne Street
San Francisco, California 94105

57. In accordance with Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), Respondent may request, within thirty (30) days of receipt of this Complaint, a hearing to contest any material fact contained in the Complaint or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted 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, a copy of which is enclosed herein.

58. If Respondent requests a hearing, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), and 40 C.F.R. § 22.45 to be heard and to present evidence on the appropriateness of the penalty assessment.

59. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should also be sent to:

Julia Jackson

Assistant Regional Counsel
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, California 94105

OPPORTUNITY FOR INFORMAL SETTLEMENT

60. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations, and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

61. Any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent stipulated.

62. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.

63. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Julia Jackson, Assistant Regional Counsel, at (415) 972-3948 or at the following address:

Julia Jackson
Office of Regional Counsel
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, California 94105

PUBLIC NOTICE

64. Section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), require

EPA to provide public notice of and a reasonable opportunity for comment before finalizing an administrative civil penalty action.

EFFECTIVE DATE

65. This proceeding is initiated by the filing of this Complaint with the Regional Hearing Clerk. For calculation of time frames provided herein, the “Effective Date” of this Complaint is the date of service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

Alexis Strauss, Director
Water Division

Date

CERTIFICATE OF SERVICE

In the Matter of San Pedro Forklift,
EPA Docket No. CWA-09-2009

I hereby certify that the original of the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing, was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, along with a copy of the 40 CFR Part 22 *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit*, certified mail, return receipt requested, to:

Renato Balov
President
San Pedro Forklift
2418 E. Sepulveda Blvd.
Long Beach, California 90810

Date

Name

Position