

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

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| IN THE MATTER OF: |) | Docket No. CWA 309(a)-09-029 |
| |) | |
| San Pedro Forklift, Inc. |) | FINDINGS OF VIOLATION |
| 2418 E. Sepulveda Blvd |) | AND |
| Long Beach, CA 90810 |) | ORDER FOR COMPLIANCE |
| |) | |
| |) | Proceedings under Section 308(a) and 309(a) |
| |) | of the Clean Water Act, as amended, 33 |
| |) | U.S.C. Sections 1318(a), and 1319(a) |

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

FINDINGS OF VIOLATION

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with the Act, including Section 402, 33 U.S.C. § 1342.
2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 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.
3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 CFR § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 CFR § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States. Pursuant to 40 CFR

§§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. Trucking, except Local, Standard Industrial Classification (SIC) 4213, falls under SIC Major Group 42 and, pursuant to 40 CFR § 122.26(b)(14)(viii), is an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.
5. 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.
6. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 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 activity.
7. 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). Since 1991, the State Board has adopted two successive statewide NPDES general permits for discharges of storm water associated with industrial activity. The permit that is currently effective, General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (General Permit) was adopted on April 17, 1997.
8. All facility operators seeking coverage under the General Permit must submit a notice of intent to comply (NOI) to the State Board fourteen days prior to commencing industrial operations. Industrial storm water dischargers that do not submit an NOI must submit an application for an individual NPDES permit. (General Permit, Provision E(1), pg. 6 and Attachment 3 to the General Permit.)
9. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (General Permit, Section A(1)(a), pg. 11.) The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges.
10. 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 as well as a site map (or maps) that identifies: (a) facility boundaries and an outline of facility drainage areas, (b) the storm water collection and conveyance system, (c) an outline of impervious

areas, (d) locations where materials are directly exposed to precipitation, and (e) areas of industrial activity. (General Permit, Section A(4), pg. 12, 13 and Section A(8), pg. 17.)

11. Facility operators must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. (General Permit, Effluent Limitation B(3), pg. 4.)
12. Facility operators must develop a written monitoring program, and must conduct quarterly visual observations of non-storm water discharges, monthly visual observations of storm water events, and prescribed storm water sampling and analysis. (General Permit, Section B(1), (3), (4), and (5), pg. 24-27.) In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit, Section B(14), pg. 35.) A copy of the written monitoring program as well as records of inspections, steps taken to reduce or prevent discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit, Section B(13), pg. 34.)
13. The Port of Los Angeles (Port) is a division of the City of Los Angeles, a municipality and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5). The majority of the property within the Port’s boundaries is owned by the Port and leased to tenants operating in various industrial categories. The remaining properties are privately owned and operated.
14. The Port does not assume responsibility for compliance with storm water requirements at any of its tenant facilities. Therefore, industrial operators within the Port’s boundaries must independently obtain coverage under the General Permit.
15. San Pedro Forklift, Inc., (Respondent) is a privately owned corporation licensed to do business in the State of California and is thus a person" under CWA Section 502(5), 33 U.S.C. § 1362(5).
16. Respondent operates a facility within the Port’s boundaries located at 2418 E. Sepulveda Boulevard in Long Beach, CA (Facility). Respondent has operated this facility since at least November 1, 2002. The facility is primarily engaged in Trucking, except Local, activities classified under SIC 4213.
17. Respondent submitted an NOI to the State Board in October 2007. The State Board assigned Waste Discharge Identification (WDID) Number 419I021360 to Respondent for the Facility on December 24, 2007.

18. Rainfall events at the Facility that exceed 0.1 inches are generally sufficient to generate storm water runoff. Data from the Torrance Municipal Airport Weather Monitoring Station, approximately six miles from the Facility, indicate there were 19 days with more than 0.1 inches of rainfall at the Facility from December 24, 2007 through November 1, 2009.
19. Storm water runoff at the Facility discharges through two storm drains located at the southwestern and southeastern sides 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 storm water discharged from the Facility contains "pollutants," including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is storm water discharge associated with industrial activity as defined by EPA regulations in 40 CFR § 122.26(b)(14).
21. The Harbor, including the outer and inner harbors, is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a water of the United States" as defined by EPA regulations in 40 CFR § 122.2.
22. On May 17, 2007, EPA inspected the Facility to evaluate Respondent's compliance with the General Permit. On November 9, 2007 EPA issued an Administrative Order CWA - 309(a)-08-014 which required Respondent to submit an application to the State of California for an NPDES permit and to come into compliance with the General Permit.
23. On August 18, 2009, EPA inspected the Facility to evaluate Respondent's compliance with Administrative Order CWA -309(a)-08-016. The inspection report is attached and incorporated by reference, and contains evidence that Respondent:
 - a. Failed to develop an adequate site map, as required by the General Permit (General Permit, Section A(4), pg. 12);
 - b. Failed to implement BMPs to control each potential pollutant and its source, as required by the General Permit (General Permit, Section A(8), pg. 17); and
 - c. Failed to conduct sampling as part of a Monitoring Program as required by the General Permit (General Permit, Section B, pg. 24-45).
24. Based on the foregoing, EPA has determined that Respondent has violated the CWA as follows:
 - a. Respondent's failure to develop and implement an adequate SWPPP while engaged in industrial activity at the Facility after December 24, 2007 violated the General Permit (General Permit, Provision E(2), pg. 6, and Section A, pg. 11-23), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a);

- b. Respondent's failure to develop and implement adequate BMPs at the Facility violated the General Permit (General Permit, Effluent Limitation B(3) pg. 4), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a); and
- c. Respondent's failure to collect storm water samples as part of an adequate Monitoring Program while engaged in industrial activity at the Facility violated the General Permit (General Permit, Section B, pg. 24-45), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violations and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Section 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ordered that Respondent comply with the following requirements:

- 25. Immediately upon receipt of this Order, Respondent shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.
- 26. Within thirty (30) days of receipt of this Order, Respondent shall complete interim measures (Interim Measures) in all areas of the Facility that have the potential to generate storm water discharge associated with industrial activity, as the term is defined at 40 CFR § 122.26(b)(14). These Interim Measures shall include, at a minimum:
 - a. Implementation of good housekeeping BMPs to prevent trash and debris from entering the storm drains; and
 - b. Implementation of structural BMPs to protect storm drains as described in the SWPPP.
- 27. Upon completion of the Interim Measures Respondent shall submit a notice of completion to EPA that shall include a list of the measures taken, the date of completion for each measure, the person(s) responsible for overseeing each measure, photographs of each completed measure, and copies of documents associated with the completion of the measures, such as contracts, permits, and manifests.
- 28. In performing the Interim Measures, care shall be taken to ensure they do not cause or contribute to any runoff to waters of the United States, the municipal storm drains, or the municipal sewer systems. Care shall also be taken to ensure compliance with all applicable federal, state, and local waste storage and disposal requirements.
- 29. Immediately upon completion of Interim Measures, Respondent shall conduct daily inspections of all Facility outdoor areas of industrial activity, as the term is defined at 40

C.F.R. 122.26(b)(14), and drainage areas to ensure that there is no pollutant source which may result in or contribute to unauthorized discharges to any waters of the United States and to determine the condition and effectiveness of BMPs. Respondent shall conduct daily inspections for a period of one year during operating hours, and shall keep an inspection log for each inspection. The inspection log shall include the following:

- a. The date and time of the inspection;
 - b. The name of the person conducting the inspection;
 - c. A check list of areas inspected;
 - d. Observation of any industrial activity or potential pollution source, including any spill, trash, or storage of material, which may drain into the storm water collection system or contribute to unpermitted discharges; and
 - e. List all control measures taken to address the observation made pursuant to subparagraph d. above and the person performing the control measures.
30. Within 45 days of the receipt of this Order, Respondent shall submit inspection logs for inspections conducted, as ordered in paragraph 29 of this Order.
31. During the next two rain events, Respondent shall conduct storm water sampling as required in the General Permit (General Permit, Section B, pg. 24-45).
32. Within 45 days of each sampling event ordered in paragraph 31 of this Order, Respondent shall submit the results to EPA.
33. Within 21 days of the receipt of this Order, Respondent shall submit a revised SWPPP to EPA that fully complies with the General Permit. The SWPPP revisions shall include, among all other required elements:
- a. A facility site map which includes flow lines;
 - b. A listing of all appropriate BMPs; and
 - c. A Monitoring Program that fully complies with the General Permit.
34. Within 30 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with: development of the revised SWPPP, projected incremental annual costs associated with implementation of the Monitoring Program, and any other costs associated with complying with this Order.
35. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 CFR § 122.22 (b)(2)) and shall include the following statement:

AI certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly

responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.@

36. All submissions requested by this Order shall be mailed to the following address:

U. S. Environmental Protection Agency - Region 9
Clean Water Act Compliance Office WTR-7
75 Hawthorne Street
San Francisco, CA 94105
Attention: Ann Murphy

All telephone inquiries should be made to Ann Murphy, Enforcement Officer, at (415) 972-3640.

37. Respondents shall send a copy of all submissions required under this Order to:

California Regional Water Quality Control Board – Los Angeles Region
Coastal Stormwater Unit
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Attention: Ivar Ridgeway

38. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.
39. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.
40. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
41. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).

42. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
43. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
44. This Order shall become effective upon the date of receipt by Respondent.

Alexis Strauss, Director
Water Division

Date