

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
 75 Hawthorne Street
 San Francisco, California 94105

**** FILED ****
 23AUG2017 - 04:30PM
 U.S.EPA - Region 09

IN THE MATTER OF:)	DOCKET NO. CWA-09-2017-0003
)	
Direct Pack, Inc. 12243 Branford Street Sun Valley, CA 91352)	COMPLAINT, CONSENT AGREEMENT AND [PROPOSED] FINAL ORDER
)	
)	<i>Class I Administrative Penalty Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
Respondent.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class I civil administrative penalty proceeding under Sections 309(g)(1)(A) and 2(A) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319(g)(1)(A) and (2)(A), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Assistant Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Direct Pack, Inc. ("Direct Pack" or "Respondent").
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for storm water discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(xi) defines storm water discharges associated with industrial activity to include plastic product manufacturing classified under SIC Major Group 30.
8. Pursuant to CWA Section 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
9. The State of California has an EPA-authorized NPDES program and issues permits, including industrial storm water permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015, hereinafter “General Permit.”
10. Pursuant to CWA Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19.4, the EPA may assess a Class I civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$37,500 in total, against a person for CWA Section 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, the EPA may assess a penalty up to \$20,965 per day of violation, not to exceed \$52,414 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

11. Respondent is a California corporation and therefore, a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5). Respondent manufactures plastic packaging products at its facility located at 12243 Branford Street, Sun Valley, California (referred to in this CA/FO as “the Facility.”)
12. Respondent has been engaged in the manufacture of plastic packaging products at the Facility since at least June 2015, on an exact date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 3081 (Unsupported Plastics Film and Sheet), and is therefore an “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(xi).
13. Storm water runoff from the Facility discharges into at least one on-site storm drain inlet located in the southern portion of the Facility that connects to the County of Los Angeles’ municipal separate

storm sewer system (MS4). Such inlets and the County of Los Angeles' MS4 are "point sources" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

14. Storm water runoff from the Facility is a "storm water discharge associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(xi).
15. Storm water discharges from the facility include plastic pellets and therefore contain "pollutants," as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
16. Discharges from the Facility enter the County of Los Angeles MS4 and discharge into Tujunga Wash, a tributary to the Los Angeles River, which flows to the Pacific Ocean. Tujunga Wash, the Los Angeles River, and the Pacific Ocean are "waters of the United States" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7) and implementing regulations.
17. Respondent's discharge of pollutants in storm water into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
18. On June 29, 2015, Respondent submitted a Notice of Intent for General Permit coverage and was assigned CA WDID#4 19I025619, authorizing discharges of stormwater associated with industrial activity beginning July 1, 2015.
19. On December 10, 2015, EPA Region 9 representatives inspected the Facility to evaluate Respondent's compliance with the General Permit. On May 4, 2016, the EPA provided its inspection report (the "inspection report") to Respondent.
20. During the December 10, 2015 inspection, the EPA inspectors observed Direct Pack personnel rinsing plastic debris off floor mats at the Facility and observed soapy washwater entering the Facility's southeastern storm drain inlet, discharging to the County of Los Angeles' MS4.
21. During the December 10, 2015 inspection, the EPA inspectors made the following observations regarding Respondent's compliance with the General Permit's requirements pertaining to the Facility's storm water pollution prevention plan (SWPPP):
 - a. The SWPPP's Site Map did not include several informational items required by Part X.E.3 of the General Permit, *i.e.*, the Facility's Site Map did not specifically identify the Facility's perimeter or drainage areas, and it inaccurately depicted a sump located near the Facility's northeastern perimeter as a "stormwater drain."
 - b. The SWPPP did not adequately describe the locations where industrial materials handled at the Facility are stored, received, shipped, and handled, as required by Part X.F of the General Permit. Specifically, the Facility's SWPPP did not describe the Facility's where plastic pellets and flakes are received and shipped at the Facility.
 - c. The SWPPP did not adequately describe each industrial process at the Facility, as required by Part X.G.1.a of the General Permit, *e.g.*, the SWPPP did not include the Facility's cleaning activities in the list of industrial processes, such as cleaning floor mats.
 - d. The SWPPP did not adequately described each material and handling area at the Facility, including the type, characteristics, and quantity of industrial materials handled or stored,

as required by Part X.G.1.b of the General Permit. The Facility's SWPPP did not include sufficient information on potential pollutant sources at the Facility's handling and storage areas, i.e., the Facility SWPPP at Section 5.B stated that for material handling and storage areas refer to Table 4-1 and Table 5-1, yet, Table 4-1 was not identified in the SWPPP and Table 5-1 did not include the shipping, receiving, and loading procedures as required in the General Permit.

- e. The SWPPP did not include an evaluation of the Facility's non-stormwater discharges and how such unauthorized non-stormwater discharges would be eliminated, as required by Part X.G.1.e of the General Permit. Specifically, the SWPPP did not evaluate the Facility's cleaning and washing operations or how to prevent non-stormwater discharges resulting from such operations.

22. During the December 10, 2015 inspection, the EPA inspectors made the following observations regarding Respondent's failure to implement Best Management Practices (BMPs) at the Facility, including Respondent's failure to:

- a. Implement good housekeeping practices, as required by Part X.H.1.a.v of the General Permit, including a requirement to observe all outdoor areas associated with industrial activity and identify perimeter areas impacted by off-facility materials or stormwater runoff, to determine good housekeeping needs. Exposed plastic flakes were uncovered and uncontained on the Facility's impervious surface that could be mobilized during a storm event.
- b. Engage in preventative maintenance at the Facility, including the establishment of procedures for prompt maintenance and repair of equipment, and maintenance of systems when conditions exist that may result in the development of spills or leaks, as required by Part X.H.1.b.iv of the General Permit. EPA inspectors observed oil staining at the Facility, indicating Facility personnel had not implemented procedures for prompt maintenance and repair of equipment.
- c. Establish procedures and/or controls to minimize spills and leaks, as required by Part X.H.1.c.i of the General Permit. Specifically, two 55-gallon drums of emulsion chemicals were stored at the Facility's northwestern perimeter without overhead coverage or containment, and multiple five-gallon buckets of various chemicals at the Facility's southern corner were stored without containment or overhead coverage.
- d. Cover industrial waste disposal containers and industrial material storage containers that contain industrial materials when not in use, as required by Part X.H.1.d.iii of the General Permit, i.e., two uncovered and uncontained garbage bins were observed in the Facility's southcentral area.
- e. Maintain BMP implementation records, training records, and records related to any spills and clean-up related response activities for a minimum of five years, as required by Part X.H.1.g.iii of the General Permit, specifically, Respondent did not have monthly inspection reports available for review at the time of inspection.
- f. Implement and maintain any advanced BMPs identified in Section X.G.2.b of the General Permit necessary to reduce or prevent discharge of pollutants in its storm water

discharge in a manner that reflects best industry practice. For instance, the partially uncovered and inactive equipment stored at the Facility's southwestern perimeter, uncovered and uncontained 55-gallon drums of emulsion chemicals at the Facility's northwestern perimeter, five-gallon buckets of various chemicals at the Facility's southern area, and exposed plastic flakes and pellets near the Facility's western and northern perimeters, did not reflect best industry practice for Respondent's industrial activity.

23. During the December 10, 2015 inspection, the EPA inspectors made the following observations regarding Respondent's failure to comply with the special requirements at Part XVIII of the General Permit applicable to facilities that handle plastic materials, including Respondent's failure to:
- a. Use of durable sealed containers designed not to rupture under typical loading and unloading activities at all points of plastic transfer and storage, as required by Part XVIII.A.1.c of the General Permit. At the time of inspection, Respondent was not using durable sealed containers at the Facility's loading/unloading, transfer, or storage areas, and EPA inspectors observed piles of exposed plastic flakes on the impervious surface in the stormwater cross path at the plastic flake storage area at the Facility's northern perimeter.
 - b. Use capture devices, e.g., catch pans, tarps, and berms, as a form of secondary containment during transfers, loading, or unloading of plastic materials, as required by Part XVIII.A.1.d of the General Permit. Specifically, Respondent was not using a secondary containment method to contain plastic pellets in the Facility's northern corner where the plastic pellet storage silos were located, and observed evidence of a release of plastic pellets, and uncontained plastic pellets, along the Facility's western side of the production building and outside the Facility's fence line.
 - c. Handle plastic materials smaller than 1 mm in size by developing a containment system designed to trap the smallest plastic material handled at the Facility with a treatment capacity of at least the peak flow rate from a one-year, one-hour storm, or develop a feasible alternative BMP or suite of BMPs that are designed to achieve a similar or better performance standard, as required by Part XVIII.A.1.f of the General Permit. At the time of EPA's inspection, Respondent had not fully implemented a containment system at the Facility's discharge points, specifically the Facility's south and southeast discharge points, to trap plastic material and keep it from discharging offsite, and that Respondent had not otherwise developed a feasible alternative BMP or suite of BMPs to prevent such offsite discharge.
24. On or about December 2015, Respondent began to address the EPA's findings above and instituted a number of measures which include the following: Written procedures to address punctured containers and/or leaking, procedures to address waste hauling, assigning a dedicated individual to addressing plastic pellets, flakes and regrind, vacuuming the facilities several times daily, and the installation of passive and active control members.
25. On November 1, 2016, the EPA sent Respondent an information request pursuant to CWA Section 308, 33 U.S.C. § 1318. On December 16, 2016, Respondent responded to the EPA's information request with documentation and a certification that Respondent had brought the Facility into compliance with the CWA and the General Permit.

26. Between July 1, 2015 and December 16, 2016, at least seven days with rainfall in excess of 0.5 inches were recorded at the Burbank Glendale Pasadena Airport. Upon information and belief, each of these seven rainfall events resulted in a discharge of storm water from the Facility to the County of Los Angeles MS4 and waters of the United States.

IV. ALLEGED VIOLATIONS

27. Between July 1, 2015 and December 16, 2016, Respondent violated CWA Section 301, 33 U.S.C. § 1311, on at least seven (7) days by discharging stormwater associated with industrial activity from a point source into waters of the United States while not in compliance with an NPDES permit as described in paragraphs 21 through 23 above. Further, Respondent violated CWA Section 402, 33 U.S.C. § 1342, each day it failed to comply with the General Permit.

28. Respondent's discharge of soapy washwater on December 10, 2015 resulted in the addition of pollutants from a point source to waters of the United States without NPDES Permit authorization and thus constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

V. ADMINISTRATIVE PENALTY

29. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of **\$42,900** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

30. Respondent shall make penalty payment by one of the options listed below:

a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

31. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
32. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Lawrence Torres
Clean Water Enforcement Section II (ENF-3-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

33. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.

34. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the CA/FO's Effective Date. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

35. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

36. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations of the complaint;
- b. admits the facts stipulated in the consent agreement;
- c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
- d. waives any right to contest the allegations set forth in this CA/FO; and
- e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

37. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

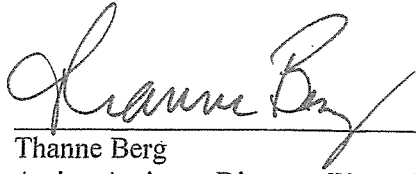
39. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the CA/FO's Effective Date is the date the Final Order, as signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the CA/FO's requirements in full.

XI. PUBLIC NOTICE

41. Pursuant to CWA Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
42. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action. For Complainant the U.S. Environmental Protection Agency, Region 9:



Thanne Berg
Acting Assistant Director, Water & Pesticides Branch
Enforcement Division
U.S. EPA Region IX

6/28/2017
Date

Of Counsel:

Rich Campbell
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9

For Respondent Direct Pack, Inc.:

Michael D. Palmer
Name

6/26/17
Date

V. P. Operations
Title

Michael D. Palmer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
 75 Hawthorne Street
 San Francisco, California 94105

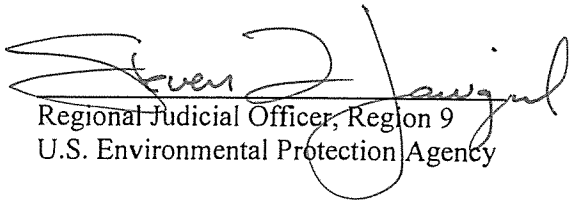
IN THE MATTER OF:)	DOCKET NO. CWA-09-2017-0003
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Direct Pack, Inc. 12243 Branford Street Sun Valley, CA 91352)	CONSENT AGREEMENT AND [PROPOSED] FINAL ORDER
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Respondent.)	<i>Class I Administrative Penalty Proceeding</i> <i>under Section 309(g) of the Clean Water Act,</i> <i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i> <i>22.13(b) and 22.18</i>
)	

The United States Environmental Protection Agency Region 9 (EPA) and Direct Pack Inc. (Respondent), having entered into the foregoing Consent Agreement, and the EPA having duly publicly noticed the proposed Consent Agreement and Final Order,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. CWA-09-2017-0003 be entered;
2. Respondent pay an administrative civil penalty of \$42,900 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement; and

This Final Order is effective on the date that it is filed with the Regional Hearing Clerk. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.


 Regional Judicial Officer, Region 9
 U.S. Environmental Protection Agency

Date: 08/22/17

CERTIFICATE OF SERVICE

I HEREBY certify that the original ~~and a copy~~ of the foregoing Consent Agreement and Final Order in the matter of Direct Pack, Inc., with Docket No. CWA-09-2017-0003 has been filed with the Regional Hearing Clerk, Region IX, and copies were sent by Certified Mail, Return Receipt Requested, to Respondent:

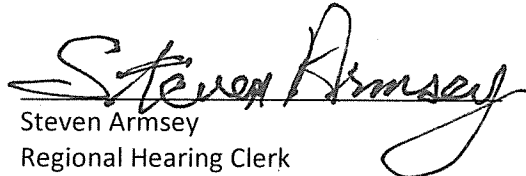
Mr. Michael D. Palmer
Vice President, Operations
Direct Pack, Inc.
12243 Branford Street
Sun Valley, CA 91352

Certified Mail Receipt #7016 1370 0000 2235 1077

Hand Delivered to:

Rich Campbell
Attorney-Advisor
Office of Regional Counsel
USEPA Region IX - ORC-2
75 Hawthorne Street
San Francisco, CA 94105

Date: Aug. 23, 2017


Steven Armsey
Regional Hearing Clerk