

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2011 JUN -6 AM 10:14  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of § Docket No. CWA-06-2011-1731  
§  
Sunrise Plastic Enterprise, Inc., §  
a Texas Corporation, § Proceeding to Assess a  
§ Civil Penalty under Section 309(g)  
§ of the Clean Water Act  
Respondent §  
§ ADMINISTRATIVE COMPLAINT  
NPDES Facility No. TXU010921 §

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA, Region 6 (“Complainant”). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. § 22.50 through 22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Sunrise Plastic Enterprise, Inc. (“Respondent”) is a corporation doing business under the laws of the State of Texas, and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all relevant times, Respondent owned or operated a wholesale plastic resins and materials facility located at 13301 Beaumont Hwy., Bldg. 14, in Houston, Harris County, Texas (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with its industrial storm water to the receiving waters of the perennial Greens Bayou, which is considered a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. The Texas Commission on Environmental Quality (“TCEQ”) assumed the NPDES program on September 14, 1998 (63 Fed. Reg. 51164), and is the permitting authority for most of Texas. Pursuant to Section 26.040 of the Texas Water Code and Section 402(P) of the Act, TCEQ issued NPDES General Permit coverage for Storm Water Discharges from Industrial Activities, which became effective August 14, 2006 (TPDES No. TXR050000). The general permit authorized “storm water discharges associated with industrial activity” to “waters of the United States” (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

8. On October 6, 2010, the facility was inspected by EPA storm water inspectors. As a result of the inspection, it was found that Sunrise Plastic Enterprise, Inc. discharged pollutants from the facility site due to rainfall events of one-half ( $\frac{1}{2}$ ) inch or more on thirty (33) occasions in 2006; forty (40) occasions in 2007; twenty-two (22) occasions in 2008; twenty-six (26) occasions in 2009, and sixteen (16) occasions in 2010 (a total of 137 rainfall events). The facility discharged into Greens Bayou without coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (TXR050000) (“Permit”).

9. A review of TCEQ's NPDES permit applications database established that, as of October 5, 2010, Respondent had not applied for, nor obtained, NPDES permit coverage by filing a Notice of Intent to be covered by a NPDES general permit for discharges from the facility.

10. The facility, therefore, discharged pollutants to waters of the United States without the authority of an NPDES permit from October 2006 to October 6, 2010 (one hundred thirty seven rainfall events of one-half ( $\frac{1}{2}$ ) inch or more that resulted in discharge from the facility). The facility was informed of the need for an NPDES permit and a Storm Water Pollution Prevention Plan ("SWPPP") during the October 6, 2010, inspection. Pollution prevention measures have not been installed on-site to prevent the discharge of pollutants.

11. Each day of unauthorized discharge was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

12. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

13. EPA has notified the Texas Commission on Environmental Quality of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

14. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

15. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a penalty of thirty-four thousand two hundred dollars (\$34,200.00) for the unauthorized discharges from June 1, 2006 to October 6, 2010.

16. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

### IV. Failure to File an Answer

17. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to the Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

19. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

20. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Efred Odoñez (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

21. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

22. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

23. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

24. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

## VI. Settlement

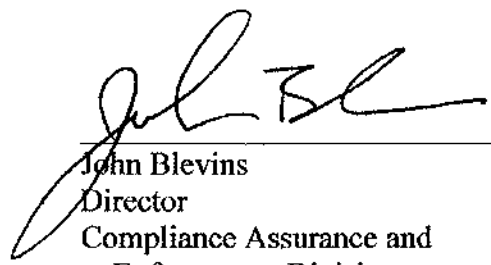
25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Everett H. Spencer, of my staff, at (214) 665-8060.

26. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent’s right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner’s comment was material and was not considered by EPA in the issuance of the CAFO.



27. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.


6.3.11  
Date

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:	Regional Hearing Clerk (6RC-D) U.S. EPA, Region 6 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733
Copy by certified mail, return receipt requested:	Mr. Thuy Van Phan, President Sunrise Plastic Enterprise, Inc. 13301 Beaumont Hwy., Bldg. 14 Houston, TX 77049
Copy:	Ms. Susan Johnson, Manager Enforcement Section I, MC 169 Texas Commission on Environmental Quality P.O. Box 13087 Austin, TX 78711-3087
Copy hand-delivered:	Mr. Efren Ordoñez (6RC-EW) Water Enforcement Legal Branch U.S. EPA, Region 6 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733

Dated: JUN 06 2011 



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

Docket Number: CWA-06-2011-1730, NPDES Facility Number: TXU010921

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. Sunrise Plastic Enterprise, Inc. ("Respondent") is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to the violations alleged herein, Respondent owned or operated a plastic resin wholesale facility, located at 13301 Beaumont Hwy., Bldg. 14, in Houston, Harris County, Texas ("facility").

3. At all times relevant to this Order, the facility was a "point source" subject to a "discharge" of "pollutant[s]" into the receiving waters of Greens Bayou, which is considered a "water of the United States" as defined by 40 C.F.R. § 122.2. As a result, Respondent and facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

4. The facility is an industry identified under 40 C.F.R. § 122.26(b)(14)(ii)(1997), operated under Standard Industrial Classification (SIC) Code 2821, and is subject to the General Permit for Storm Water Discharges Associated with Industrial Activity ("permit") issued by the Texas Commission on Environmental Quality ("TCEQ") on September 29, 2008.

5. On October 6, 2010, the facility was inspected by EPA Storm Water Inspectors. As a result of this inspection, the facility was found to be in violation of Section 301 of the Act, 33 U.S.C. § 1311 for discharging storm water from the facility without a TCEQ permit.

6. The facility began operations defined as industrial activity in June 1995, which continued throughout the time period relevant to this action. During the time period from October 2006 to October 2010, there were one hundred thirty-seven (137) rain events of one-half (½) inch or greater that resulted in unauthorized discharges of pollutants from the facility.

7. According to the TCEQ database that records all applications for storm water general permit coverage, Respondent did not submit a Notice of Intent ("NOI") for permit coverage for its activities at the facility, and was not covered by a NPDES permit at the relevant times for the relevant activities. The facility does not have pollution prevention measures in place to prevent the discharge of pollutants to Greens Bayou. Each day of operation without NPDES permit coverage is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these findings and pursuant to the authority of Section 309(a) of the Act, EPA hereby orders the Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, Respondent shall make a complete and correct application for coverage under the permit, and shall submit it to EPA at the address below, along with a copy of the permit application and a copy of the confirmation of coverage showing the NPDES permit number issued by TCEQ.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a copy of the Storm Water Pollution Prevention Plan ("SWPPP") developed specifically for the facility located at 13301 Beaumont Hwy., Bldg. 14 in Houston, Texas. The SWPPP should detail best management practices, inspections, benchmark sampling and analysis, and other measures taken to reduce or eliminate the discharge of pollutants to Greens Bayou.

C. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written certification of compliance with this Order to the EPA, Region 6. All correspondence should be addressed to:

Mr. Everett H. Spencer  
Water Enforcement Branch (6EN-WM)  
EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to waive any administrative or judicial, civil or criminal action to seek penalties, fines, or other relief under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

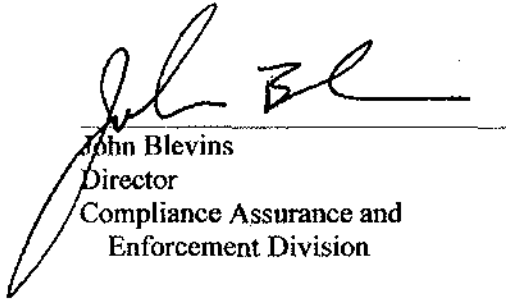
Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligation to comply with all applicable federal, state, or local laws or regulations.

The effective date of this Order is the date it is received by the Respondent.

6.3.11

Date



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division