

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

In the Matter of § Docket No. CWA-06-2014-1769
§
East Baton Rouge Parish/City of Baton Rouge, § Proceeding to Assess a Class II
a Louisiana municipality, § Civil Penalty under Section 309(g)
§ of the Clean Water Act
Respondent §
§ ADMINISTRATIVE COMPLAINT
LPDES Permit No. LAS000101 §

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RECORDING CLERK
EPA REGION VI

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 (“the Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class II Administrative Complaint is issued 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. §§ 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. East Baton Rouge Parish/City of Baton Rouge (“Respondent”) is a municipality chartered under the laws of the State of Louisiana, 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 times relevant to this action (“all relevant times”), Respondent owned or operated a Municipal Separate Storm Sewer System (“MS4”), which is defined as a “conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains)” (“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 acted as a “point source” of a “discharge” of “pollutants” with its municipal storm water to the receiving waters of the Mississippi River, 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 Louisiana Pollutant Discharge Elimination System (“LPDES”) 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 LPDES 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 LPDES 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. Section 402 of the Act, 33 U.S.C. § 1342, authorizes states to request approval from EPA to administer their own permit programs for discharges into navigable waters within their jurisdiction. Pursuant to this provision, the State of Louisiana requested approval from EPA to administer its own permit program for discharges into navigable waters within Louisiana, and such approval was granted by EPA on August 29, 1996. Therefore, pursuant to the State's permit program, LDEQ has issued Louisiana Pollutant Discharge Elimination System ("LPDES") permits. Violation of a LPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

8. At all relevant times, Respondent was an "owner" or "operator" of a facility engaged in industrial activity that was a point source subject to discharges of pollutants to waters of the United States, within the meaning of 40 C.F.R. Part 122 and the permit, and Respondent was, therefore, required to obtain LPDES permit coverage at the effective date of the applicable permit and regulations, or upon commencing the subject activities thereafter.

9. The facility began the relevant operations defined as MS4 operations on May 30, 1997 (date of the first permit issuance), which continued throughout the time period relevant to this Complaint.

10. On September 25-26, 2013, EPA performed a compliance assessment of the Respondent's Storm Water Management Plan ("SWMP") to determine compliance with the permit.

11. During the course of the compliance assessment, it was determined that the MS4 had failed to implement Part VI.O of the Permit (*Proper Operation and Maintenance*). Specific violations include failure to provide sufficient administrative, technical and inspection staff, equipment and resources to conduct inspections, failure to investigate alleged illicit discharges and document inspection reports and related storm water management activities in a database.

12. Each day that Respondent conducted the relevant activities and operated the facility in violation of their LPDES Permit (No. LAS000101) was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

13. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), 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 \$187,500.

14. EPA has notified the LDEQ 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).

15. 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

16. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of one hundred eighty-five thousand five hundred and twenty dollars (\$185,520.00).

17. 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, 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

18. 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 this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

19. 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).

20. 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.

21. 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. Scott McDonald (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

22. 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

23. 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.

24. 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.

25. 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

26. 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 Ms. Thea Lomax, of my staff, at (214) 665-8098.

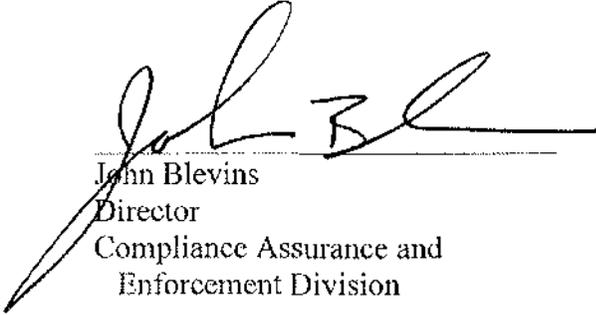
27. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's 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.

28. 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.

Date

6.16.14



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II 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:	Dr. Dale Campau, Ph.D., Environmental Coordinator Environmental Division Department of Public Works East Baton Rouge Parish/City of Baton Rouge P.O. Box 1471 Baton Rouge, LA 70821-1471
Copy by regular mail:	Ms. Angela Marse, Manager Water Enforcement Office of Environmental Compliance Louisiana Department of Environmental Quality P.O. Box 4312 Baton Rouge, LA 70821-4312
Copy hand-delivered:	Mr. Rusty Herbert (6RC-EW) U.S. EPA, Region 6 10625 Fallstone Road Houston, TX 77099

Dated: June 18, 2014

Lori Jackson