

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne Street  
San Francisco, California 94105

2007 SEP 12 AM 11:04

U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

IN THE MATTER OF

**Coulter Forge Technology, Inc.**

1494 67<sup>th</sup> Street  
Emeryville, California 94608

Respondent

) Docket No. CWA 09-2007- 0001 =

)  
) **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 (the "Act" or "CWA"), 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 done in compliance 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, 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 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.

5. Iron and steel forging (Standard Industrial Classification (“SIC”) 3462) and nonferrous forging (SIC 3463) fall under SIC Major Group 34 and, pursuant to 40 CFR § 122.26(14)(xi), are industrial activities 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 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.
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”). 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.
9. 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. 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 commencing industrial operations. (General Permit, Order Section A(1)(a), pg. 11). The purpose of the SWPPP is 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 implement the BMPs identified in the SWPPP in order to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. (General Permit, Order Section A(8), pg. 17).
12. The General Permit requires facility operators to revise the SWPPP “whenever appropriate” and to ensure that it is readily available for review by facility employees or inspectors. (General Permit, Order Section A(2), pg. 12). Information gathered during monitoring and inspections should be used to determine appropriate revisions to the SWPPP. (General Permit, Order Section B(3), (4) pg. 25-26).
13. 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, Order 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, Order 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, Order Section B(13), pg. 34).

### **Factual Background**

14. Coulter Forge Technology, Inc. (“Respondent”) is a California corporation. At all times relevant to this action, Respondent was the owner and/or operator of a metal forging business located at 1494 67<sup>th</sup> Street, in Emeryville, California (the “Facility”). Respondent has been operating at the Facility since before September 1, 2002.
15. The Facility consists of one building and numerous outdoor industrial areas. Respondent, which is classified under SIC 3462 and 3463, conducts a variety of industrial activities in the Facility’s uncovered outdoor areas, including storage and maintenance of industrial equipment and loading, transportation, storage, and handling of raw materials, products, byproducts, and waste materials.
16. On-site drains collect and channel surface water runoff to four storm drains on the south and northwest sides of the Facility. The storm drains discharge to the municipal storm drain system and, ultimately (approximately 2,400 feet from the Facility), into San Francisco Bay, which flows into the Pacific Ocean.
17. Between September 1, 2002, and January 5, 2007, there were 78 rainfall events in excess of 0.5 inches at the Western Climate Center’s Weather Station No. 046336, located at the

Oakland Museum (the "Weather Station"), approximately five and a half miles from the Facility. Rainfall events exceeding 0.5 inches are generally sufficient to generate surface water runoff at the Facility.

18. The Alameda County Department of Environmental Health ("ACDEH") conducted a storm water compliance inspection at the Facility on April 21, 2004.
19. On September 18, 2006, EPA Region 9 staff inspected the Facility to evaluate Respondent's compliance with the CWA and the General Permit.

### **Findings of Violation**

#### Count 1

#### (Discharge without an NPDES Permit)

20. The facts stated in paragraphs 1 through 19 above are incorporated herein.
21. In or around August 2003, Respondent submitted an NOI to the State Board seeking coverage under the General Permit. On September 5, 2003, the San Francisco Bay Regional Water Quality Control Board assigned Respondent General Permit number WDWD# 2 01I018324. Prior to September 5, 2003, discharges from Respondent's industrial activities at the Facility were not covered by the General Permit or an individual NPDES permit.
22. Respondent is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
23. Storm water runoff and drainage from the Facility contains metal shavings and other "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
24. The storm drains at the Facility that empty into the San Francisco Bay are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
25. Storm water runoff from the Facility that drains into San Francisco Bay is storm water discharge associated with an industrial activity as defined by 40 CFR § 122.26(b)(14)(xi).
26. The San Francisco Bay and the Pacific Ocean are each "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" as defined in EPA's implementing regulations at 40 CFR § 122.2.
27. Between September 1, 2002, and September 5, 2003, there were 21 recorded rainfall events at the Weather Station that exceeded 0.5 inches. Each of the 21 rainfall events

generated storm water associated with industrial activity at the Facility that discharged into and added pollutants to San Francisco Bay.

28. Each storm water discharge from the Facility between September 1, 2002, and September 5, 2003, violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Count 2  
(Failure to Submit an NOI)

29. The facts stated in paragraphs 1 through 28 above are incorporated herein.
30. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21, require dischargers of storm water associated with industrial activity to submit an application for an NPDES permit prior to commencing industrial activity.
31. Respondent's failure to submit an NOI for coverage under the General Permit before commencing industrial operations at the Facility violated Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21.

Count 3  
(Failure to Comply with NPDES Permit Requirements)

32. The facts stated in paragraphs 1 through 31 above are incorporated herein.
33. Following receipt of permit coverage on September 5, 2003, Respondent failed to comply with the requirements of the General Permit as follows:

Failure to Develop and Implement a SWPPP

34. The General Permit (General Permit, Order Section A(1)(a), pg. 11) requires facility operators to develop and implement a SWPPP prior to commencing industrial operations.
35. During ACDEH's April 21, 2004 inspection, it noted that Respondent had not developed or implemented a SWPPP at the Facility.
36. Respondent's failure to develop and implement a SWPPP while engaged in industrial activity at the Facility between September 5, 2003, and April 21, 2004, violated the General Permit (General Permit, Order Section A(1)(a), pg. 11), 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).

#### Failure to Develop a Written Monitoring Program

37. The General Permit (General Permit, Order Section B(1)(a), pg. 24) requires facility operators to develop a written monitoring program prior to commencing industrial operations.
38. At the time of ACDEH's April 21, 2004 inspection, Respondent had not developed a written monitoring program for the Facility.
39. Respondent's failure to develop a written monitoring program while engaged in industrial activity at the Facility between September 5, 2003, and April 21, 2004, violated the General Permit (General Permit, Order Section B(1)(a), pg. 24), 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).

#### Failure to Implement BMPs

40. The General Permit (General Permit, Order Section A(8), pg. 17) requires facility operators to implement a SWPPP when industrial activities begin.
41. In or around May 2004, Respondent developed a SWPPP that included the following BMPs:
  - a. Store hazardous materials, waste fluids, and drums containing surface residues or hazardous materials inside and under cover;
  - b. Maintain clean and organized outside storage areas. Inspect exposed surfaces in the outside storage areas for tracking of materials, debris, or other residues;
  - c. Contain all outdoor storage items on pallets and under cover by November 1, 2004;
  - d. Conduct housekeeping tasks frequently in the outdoor roll-off and scrap bin areas and ensure the areas are maintained in a clean and organized manner; and
  - e. Construct a berm along the western perimeter of the Facility by November 1, 2004.
42. During EPA's September 18, 2006 inspection, EPA staff observed:
  - a. Drums containing waste fluids, surface residues, and/or hazardous materials that were being stored outdoors;
  - b. Poor housekeeping practices in the outside storage areas, including evidence of spills of oily substances, product wastes, and other pollutants as well as the presence of significant amounts of debris covering the Facility's storm drains, including metal shavings;
  - c. Outdoor storage items that were not contained on pallets or under cover;

- d. Poor housekeeping practices in the outdoor roll-off and scrap bin areas, including the presence of significant amounts of debris; and
  - e. That Respondent had not constructed a berm along the western perimeter of the Facility.
43. Respondent's failure to implement all BMPs identified in the SWPPP at the time of EPA's inspection violated the General Permit (General Permit, Order Section A(8), pg. 17), 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).

Failure to Update and Revise SWPPP as Necessary

44. The General Permit requires facility operators to revise the SWPPP "whenever appropriate." (General Permit, Order Section A(2), pg. 12).
45. At the time of EPA's September 18, 2006 inspection, Respondent had not updated its SWPPP to reflect the fact that certain BMPs had not been implemented, including construction of the berm and placement of outdoor storage items under cover and on pallets.
46. Respondent's failure to update its SWPPP violated the General Permit (General Permit, Order Section A(2), pg. 12), which was issued pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Failure to Conduct and or Maintain Records of Facility Inspections

47. The General Permit requires facility operators to maintain copies of records, including records of inspections, for at least five years and to make those records available at the facility for review by inspectors. (General Permit, Order Section B(13), pg. 34).
48. During EPA's September 18, 2006 inspection, Respondent was unable to provide EPA staff with records of inspections or evaluation reports as required by the General Permit.
49. Respondent's failure to maintain records of inspections and produce records for EPA staff at the time of the inspection violated the General Permit (General Permit, Order Section B(13), pg. 13), which was issued pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**NOTICE OF PROPOSED ORDER ASSESSING PENALTIES**

50. 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 CFR Part 19, violations that occurred between January 30, 1997, and March 15, 2004, are subject to a penalty of up to \$11,000 per day of violation, up to a maximum penalty of \$137,500. Violations that occurred after March 15, 2004 are subject to a penalty of up to \$11,000 per day of violation, up to a maximum penalty of \$157,500.

51. 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 the amount of \$36,000.
52. 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, its ability to pay, any prior history of such violation, its degree of culpability, its economic benefit or savings resulting from the violation, and such other matters as justice may require.
53. EPA has consulted with the State of California regarding this Complaint and its intention to seek civil administrative penalties against Respondent.
54. If Respondent does not contest the findings and assessments set forth above, Respondent may make payment of the penalties assessed herein 10 days after the close of the public comment period that is provided for in 40 CFR 22.45.

Payment of the \$36,000 penalty may be made by certified or cashier's check payable to "Treasurer, United States of America" and remitted to:

EPA - Region 9  
Attn: Regional Hearing Clerk  
c/o Mellon Bank  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

The check should reference the name and docket number of this Complaint.

55. Neither assessment nor payment of a civil administrative penalty pursuant to this section of the Act 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 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:

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

57. In accordance with Section 309(g)(2) of the Act, 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 herein. 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 CFR 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 CFR § 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 be sent to:

Michael Massey  
Assistant Regional Counsel (ORC-3)  
U.S. EPA Region 9  
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 Michael Massey, Assistant Regional Counsel, at (415) 972-3034 or at the following address:

Michael Massey  
Assistant Regional Counsel (ORC-3)  
U.S. EPA Region 9  
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 CFR §22.45(b), require EPA to provide public notice of and a reasonable opportunity for comment before finalizing a 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 CFR §§ 22.5(b) and 22.7(c).



Alexis Strauss  
Director  
Water Division



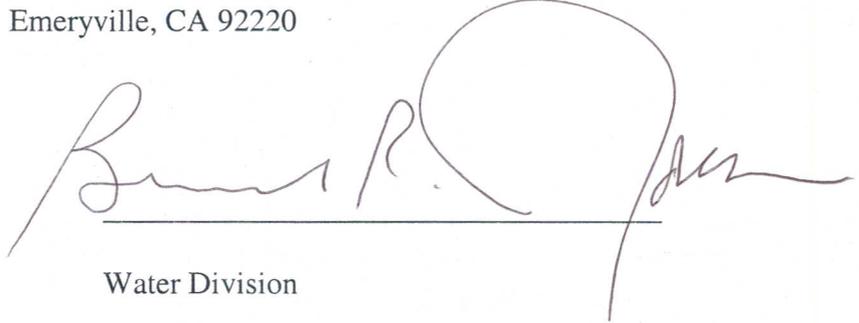
Date

**CERTIFICATE OF SERVICE**

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 40 CFR Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, certified mail, return receipt requested, to:

Mr. Peter Bierwith  
P.O. Box 8008  
Emeryville, CA 92220

9/12/07  
Date

  
Water Division