

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

2011 JUN -6 AM 10: 14

In the Matter of § Docket No. CWA-06-2011-1794
§
Water Works District #3 of Rapides Parish, §
a Louisiana political subdivision § Proceeding to Assess a Class I
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
Respondent §
§ ADMINISTRATIVE COMPLAINT
LPDES Facility No. LAU000363 §

REGIONAL HEARING 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 (“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 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 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 including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50-22.52.

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. Water Works District #3 of Rapides Parish (“Respondent”) is a political subdivision 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 19.6 acre lateral water line construction site located in Rapides Parish, Louisiana (“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 storm water to the receiving waters of Mill Creek, Beaver Creek, and Little Creek, thence to Flagon 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 the Louisiana Department of Environmental Quality (“LDEQ”) may issue permits under the Louisiana Pollutant Discharge Elimination System (“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. LDEQ assumed the NPDES program on August 27, 1996 (61 Fed. Reg. 47932), and is the permitting authority for most of Louisiana. Pursuant to 402(p) of the Act, LDEQ issued LPDES General Permit coverage for Storm Water Discharges from Construction Activities, which became effective on October 1, 2009. The general permit authorized storm water discharges associated with construction 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. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities subject to storm water discharges associated with “industrial activity” are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

9. Under 40 C.F.R. § 122.26(b), the following categories of facilities are among those considered to be engaging in “industrial activity” for purposes of Section 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

40 C.F.R. § 122.26(b)(14)(x): Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of develop or sale.

10. At all relevant times, the facility was a “point source,” as that term is defined at Section 502(14) of the Act, 33 U.S.C. 1362(14), and 40 C.F.R. § 122.2.

11. 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 NPDES permit coverage at the effective date of the applicable permit and regulations, or upon commencing the subject activities thereafter.

12. The facility began the relevant operations defined as industrial activity on November 9, 2009, which continued throughout the time period relevant to this action.

13. According to the LDEQ database that records all applications for storm water general permit coverage, Respondent did not make timely application for permit coverage for its activities at the facility, and was not covered by a LPDES permit at the relevant times for the relevant activities.

14. On February 24, 2011, the facility was inspected by EPA. As a result of the inspection, it was found that Water Works District #3 of Rapides Parish discharged pollutants in its storm water from the facility site into waters of the United States without coverage under the LPDES General Permit coverage for Storm Water Discharges from Construction Activities.

15. Respondent had not applied for permit coverage under the LDEQ General Permit for Storm Water Discharges Associated with Construction Activities. Also, Respondent had not developed and implemented a Storm Water Pollution Prevention Plan or Best Management Practices.

16. During the time period from November 2009 to February 2011 during rainfall events of one-half ("1/2") inch or greater, the facility discharged pollutants with its stormwater to waters of the United States on 35 occasions without the authority of an LPDES General Permit. Each unauthorized discharge of pollutants is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

17. 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 \$177,500.

18. EPA has notified the State of Louisiana 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).

19. 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

20. 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 eight thousand dollars (\$8,000.00).

21. 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

22. 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.

23. 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).

24. 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.

25. 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. Efren Ordoñez (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

26. 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

27. 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.

28. 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.

29. 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

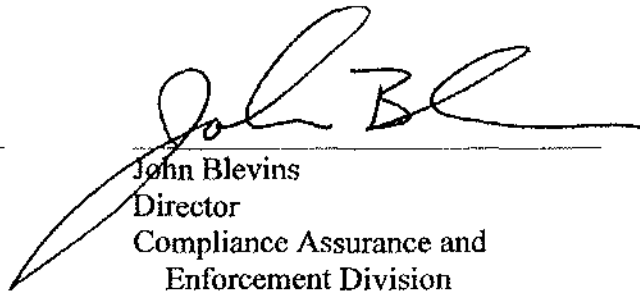
30. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed 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. Diana McDonald, of my staff, at (214) 665-7495.

31. 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.

32. 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.

5.31.11
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. Jimmy R. French
 General Manager
 Water Works District #3 of Rapides Parish
 P.O. Box 580
 Tioga, LA 71477

Copy hand-delivered: Mr. Efren Ordoñez (6RC-EW)
 U.S. EPA, Region 6
 1445 Ross Avenue, Suite 1200
 Dallas, TX 75202-2733

Dated: JUN 06 2011

