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Attorneys for Respondent San Pedro Forklift

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

In re the Matter of:) CASE NO. CW-A-09-2009-0006
)
San Pedro Forklift) ANSWER TO ADMINISTRATIVE
) COMPLAINT AND NOTICE
) OF OPPORTUNITY FOR
2418 E. Sepulveda Boulevard) HEARING
Long Beach, California 90810)
)
Respondent.) Proceedings Under Section 309(g)(2)(B)
) the Clean Water Act, as amended, 33
) U.S.C. §1319(g)(2)(B)
)

COMES NOW, SAN PEDRO FORKLIFT (hereinafter "Respondent") and hereby answers the administrative complaint as follows:

PERTINENT CASE FACTS

Respondent offers the following pertinent case facts in response and in answer to the Administrative Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing (hereinafter the "Action"), filed by the complainant the United States Environmental Protection

Agency (hereinafter "EPA") on or about, September 29, 2009.

1. Respondent has entered into continuing discussions with EPA staff concerning the Action, proposed resolution and equitable factors, regarding the pending Action filed by EPA over the previous ten (10) months.

2. The Port of Los Angeles ("POL") is the owner (and former operator) of Respondents property identified as 2418 E. Sepulveda Boulevard, Long Beach, California (the "Site"). Moreover, POL previously operated the Site as an owner/operator for storage and transportation activities.

3. Although required to do so pursuant the statutory requirements set forth in EPA's actions, including but not limited to, Section 33 U.S.C. §12514 et seq. of the Clean Water Act (hereinafter the "Act"), POL never complied with the Act and required Respondent to pave, clean-up and spend thousands of dollars to improve the Site before leasing the Site to Respondent on or about October 1,1999 (the "Agreement").

4. Although arduous, the Agreement had no requirements for submittal of a Storm Water Pollution Permit Program (hereinafter "SWPPP") permit.

5. EPA first inspected the site on or about May 17, 2007, and subsequently issued a Findings of Violation and Order for Compliance (reference EPA Docket No. CWA 309(a)-08-016) on or about November 9, 2007 (hereinafter the "Order").

6. Respondent immediately complied with all aspects of Storm Water Pollution Permit Program (hereinafter "SWPPP") permit requirements following EPA Inspection of the facility and Notice.

7. Respondent has continuously complied with provisions of their issued SWPPP permit

including noted Best Management Practices or (“BMPs”) The BMP *only requires* Respondent to utilize a sweeper truck to clean basic debris at the facility two times a year. Although, completed numerous more times than required, Respondent also continues to conduct daily physical clean up of the Site at the end of each business day in accordance with California OSHA restrictions.

8. Respondent has attempted faithfully to complete required sampling/monitoring actions under the SWPPP but cannot complete same due to a severe issue of a commingled plume and lack of cooperation with the Port of Los Angeles (“POL”) to modify their drainage area to ensure proper sampling methodology and BMP implementation.

9. Respondent was informed and believed based upon discussions with ranking EPA officials all *compliance actions were completed and no penalty would be requested or required.*

10. Respondent subsequently evaluated rain data received from EPA which served as a key component of the action and proposed penalty now pending in the Action. The rain data is greatly miscalculated and serves as the primary basis assessment of the proposed penalty in the Action.

11. Respondent received Certified Mail Service of the subject complaint on or about October 5, 2009, and has engaged in continuous dialogue with EPA concerning resolution of the Action.

12. Respondent was recently inspected by the Los Angeles Department of Public Works Sanitation and Water Shed Protection Division and granted a “clean bill” of health and determined to be in full compliance with the Clean Water Act Section 301(a), 33 U.S.C. §1311 et seq.

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COUNT 1:

13. The facts stated in paragraphs 1 through 12 above are incorporated herein by this answer to the Action.

14. On or about December 12, 2007, Respondent submitted and received approval for an NOI from the State Water Resources Control Board for facility coverage under a general storm water pollution SWPPP permit for Respondents facility. Paragraph 27 of the Order required Respondent to submit a SWPPP within “30 days of receipt of NPDES permit coverage”.

15. On or about December 24, 2007, the State Water Resources Control Board “*formally*” granted Respondent’s coverage under the general storm water pollution permit program and the existence of a SWPPP.

16. Prior to the facility of SPF is owned and previously operated by the Port of Los Angeles. *There is no evidence whatsoever that the facility ever applied for and/or acquired a permit prior to the filing by Respondent.*

17. The Action relies heavily on inaccurate rain data. Direct evidence from the closest Weather Monitoring Station indicates less than seventeen (17) days of rain events closest to the Site.

18. Therefore, Respondent denies that a permit was required and/or implicates by way of this answer the Port of Los Angeles due to its failure of to limit storm water discharges from the facility and failure to obtain a NPDES or SWPPP permit. Respondent refutes the evidence of rainfall data relied upon by EPA and that a SWPPP was submitted and approved beyond the “30 day” compliance period specified in the Order by EPA.

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COUNT 2:

19. The facts stated in paragraphs 1 through 18 above are incorporated herein by this answer to the Action.

20. Respondent immediately complied with the requirements of EPA as stated above in paragraph 14 above on or about December 12, 2007.

21. Respondent further asserts that the Port of Los Angeles failed to comply with NOI and/or general permit coverage including an NPDES permit for the facility for more than twenty (20) years *prior to the occupation* of the Site by Respondent.

22. Therefore, Respondent denies all the allegations set forth in Count 2 by EPA in the Action.

COUNT 3:

23. The facts stated in paragraphs 1 through 22 above are incorporated herein by this answer to the Action.

24. As of December 24, 2007, as set forth in paragraph 14, Respondent had received confirmation of its NOI with the State Water Resources Control Board and had fully implemented all aspects of its SWPPP including BMP or Best Management Practices requirements for the Site.

25. As of December 12, 2007, as set forth in paragraph 15, Respondent had received formal approval of its SWPPP from the State Water Resources Control Board and fully implemented all aspects of its SWPPP permit including BMP or Best Management Practices requirements for the Site. Additionally, as noted in paragraph 8, Respondent has attempted faithfully to complete required monitoring/sampling actions under its SWPPP but cannot secure a representative sample due to a

severe issue of a commingled plume at the Site and lack of cooperation with the Port of Los Angeles (“POL”) to modify their drainage area to ensure proper sampling methodology and BMP implementation.

26. EPA inaccurately asserted a massive number of days of non compliance. Respondent was already in compliance with all aspects of its SWPPP from December 12, 2007 forward. Therefore, Respondent denies each and every aspect of Count No. 3 as raised in the EPA Action as no violation as asserted by EPA occurred.

ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING


By this responsive pleading to the Action, Respondent hereby requests a formal hearing within the thirty (30) days of service this complaint (October 5, 2009) or a time frame mutually agreed upon between the parties. Respondent further requests a hearing, if necessary, is conducted in the jurisdiction of Long Beach or Los Angeles, California

OPPORTUNITY FOR INFORMAL SETTLEMENT

Respondent also informs and asserts to the Regional Hearing Clerk it has submitted various documentation which it has yet to receive a full response from EPA regarding informal settlement of the matter short of a formal administrative hearing. Respondent further asserts it will continue its efforts to informally resolve the matter with EPA.

DATED: November 5, 2009

GLASER & TONSICH, LLP


By: John C. Glaser, Esq.
Attorney for Respondent
San Pedro Forklift

PROOF OF SERVICE

I, KATHY LOPEZ, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2500 Via Cabrillo Marina, Suite 310, San Pedro, California 90731 (310) 241-1200.

On November 5, 2009, I served the foregoing document(s) described as **ANSWER TO ADMINISTRATIVE COMPLAINT** on all interested parties in this action as listed below:

**Regional Hearing Clerk
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105**

**Julia Jackson, Esq.
Assistant Regional Counsel
United States EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105**

- (BY U.S. MAIL)** I caused such envelope(s) to be deposited in the United States mail at San Pedro, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)(3)).
- (VIA FACSIMILE)** I caused such document to be transmitted to the interested parties via facsimile to the offices of addressee(s). (C.C.P. § 1013(a)(e)(f)).
- (VIA UPS)** I caused such envelope(s) to be delivered by air courier, with next day service, to the offices of the addressee(s) (C.C.P. § 1013(c)(d)).
- (PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand to the offices of the addressee(s). (C.C.P. § 1011(a)(b)).
- (STATE)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on November 5, 2009, at San Pedro, California.

KATHY LOPEZ

