

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED

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REGIONAL HEARING OFFICE  
EPA REGION VI

In the Matter of:	§ Docket No. CWA-06-2019-1711
	§
Wyman-Gordon Forging, Inc.	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
Facility Number: TX0042129	ADMINISTRATIVE COMPLAINT

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 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, 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,” 40 C.F.R. Part 22, including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that Wyman-Gordon Forging, Inc. (“Respondent”) 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. Respondent is a corporation incorporated 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 times relevant to this action (“all relevant times”), Respondent owned or operated Wyman-Gordon Forging, Inc. Houston facility, a forged and extruded metal manufacturing plant, located at 10825 Telge Road, on the southwest corner of the intersection of U.S. Highway 290 and Telge Road, south of the Town of Cypress, 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 acted as a “point source” of a “discharge” of “pollutants,” with its final wastewater to the receiving waters of Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin, 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 and/or operated a facility that acted as a point source of a discharge 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. 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 Texas requested approval from EPA to administer its own permit program for discharges into navigable waters within Texas, and such approval was granted by EPA on September 14, 1998. Therefore, pursuant to the State’s permit program, the Texas Commission on Environmental Quality (“TCEQ”) has issued Texas Pollutant Discharge Elimination System (“TPDES”) permits. Violation of a TPDES permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

8. The Respondent applied for and was issued TPDES Permit No. TX0042129 (“permit”) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on August 30, 2007, and renewed on July 18, 2014. At all relevant times, the Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

9. The permit includes “Monitoring and Reporting Requirements” that require Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures in order to determine the facility’s compliance or noncompliance with the permit and applicable regulations.

The permit also requires Respondent to file with TCEQ certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring.

10. The permit contains “Effluent Limitations and Monitoring Requirements” that place certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Attachment A, which is incorporated herein by reference.

11. On June 27-28, 2017 EPA conducted an inspection of the facility’s wastewater treatment system. The inspection found that the “Monitoring and Reporting Requirements” and the “Effluent Limitations and Monitoring Requirements” of the permit were violated.

12. Pursuant to the permit’s “Effluent Limitations and Monitoring Requirements” paragraph (1) regarding Outfall 002, Respondent is required to monitor and record effluent flow because the facility’s flow cannot exceed .225 million gallons per day (MGD) and the daily maximum flow cannot exceed .55 MGD. Respondent is required to monitor and record effluent flow on a continuous basis.

13. Respondent violated the permit’s “Effluent Limitations and Monitoring Requirement” paragraph 1 regarding Outfall 002 by failing to continuously monitor and record effluent flow from Outfall 002 from July 18, 2014 to January 19, 2018.

14. Pursuant to the permit’s “Effluent Limitations and Monitoring Requirements” paragraph (1) regarding Outfall 001, Respondent is required to take samples once per week for Total Suspended Solids (“TSS”), Ammonia, Carbonaceous Biochemical Oxygen Demand (“CBOD”)(5-day), Chemical Oxygen Demand (“COD”), Dissolved Oxygen, and Oil & Grease.

15. Respondent violated the permit’s “Effluent Limitations and Monitoring Requirements” paragraph (1) regarding Outfall 001 by failing to take weekly samples for TSS, Ammonia, CBOD, COD, Dissolved Oxygen, and Oil & Grease from July 18, 2014 to September 4, 2017.

16. Pursuant to the permit’s “Effluent Limitations and Monitoring Requirements” paragraph (1) regarding Outfall 002, Respondent is required to take samples twice per week for TSS, CBOD (5-day), Ammonia, COD, Dissolved Oxygen, and Oil & Grease.

17. Respondent violated the permit’s “Effluent Limitations and Monitoring Requirement” paragraph (1) regarding Outfall 002 by failing to take two weekly samples for TSS, CBOD(5-day), Ammonia, COD, Dissolved Oxygen, and Oil & Grease from March 17, 2015 to September 4, 2017.

18. Pursuant to the permit's "Effluent Limitations and Monitoring Requirements" paragraph (1) regarding Outfalls 001 and 002, Respondent is required to take samples once every six months for Chromium, Copper, Lead, Manganese, Nickel, and Zinc.

19. Respondent violated the permit's "Effluent Limitations and Monitoring Requirements" paragraph (1) regarding Outfall 001 and 002 by failing to take samples once every six months for Chromium, Copper, Lead, Manganese, Nickel, and Zinc from January 1, 2015 to September 4, 2017.

20. Pursuant to the permit's "Effluent Limitations and Monitoring Requirement" paragraph (1) regarding Outfall 002, Respondent is required to report effluent concentration measures for COD, TSS, Ammonia, Oil & Grease, and CBOD. The concentration measures for the Daily Average and Daily Maximum must be reported in pounds per day (lbs/day).

21. Respondent violated the permit's "Effluent Limitations and Monitoring Requirements" paragraph (1) regarding Outfall 002 by failing to report the Daily average and Daily Maximum in pounds per day regarding COD, TSS, Oil & Grease, Ammonia, and CBOD from August 2014 to September 2017. For each effluent characteristic, Respondent erroneously inserted the value of milligrams per liter (mg/L) to represent lbs./day.

22. Pursuant to the permit's "Effluent Limitations and Monitoring Requirement" paragraph 1 regarding Outfall 002, Respondent is required to collect composite samples for TSS, Ammonia, CBOD, COD, and Whole Effluent Toxicity (WET). A composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period.

23. Respondent violated the permit's "Effluent Limitations and Monitoring Requirements" paragraph 1 regarding Outfall 002 by failing to collect composite samples for TSS, Ammonia, CBOD, COD, and WET from August 2014 to September 2017.

24. Pursuant to the permit's "Monitoring and Reporting Requirement" paragraph 2, Testing Procedures, Respondent is required to use test procedures for the analysis of pollutants that comply with procedures specified in 40 C.F.R. Part 136 and 30 Texas Administrative Code (TAC) 319.11 – 319.12.

25. Respondent violated the permit's "Monitoring and Reporting Requirement" paragraph 2, Testing Procedures, by failing to use an authorized test procedure for Hexavalent Chromium from August 2014 to September 2017.

26. Respondent violated the permit's "Monitoring and Reporting Requirements" paragraph (2), Test Procedures, by failing to use an authorized test procedure for CBOD from August 2014 to September 2017.

27. On April 11, 2018, EPA issued to Respondent Administrative Order (AO) Docket Number CWA-06-2016-1739, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), citing the violations listed above in paragraphs 12 through 26.

28. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(B), as modified by 40 C.F.R. Part 19, Respondent is liable for a civil penalty in an amount not to exceed \$21,393.00 per day for each day during which a violation occurs or continues, up to a maximum of \$267,415.

29. EPA has notified the Texas Commission on Environmental Quality ("TCEQ") of the issuance of this Complaint and has afforded these agencies 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).

30. 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. The public notification can be found at: [www.epa.gov/publicnotices](http://www.epa.gov/publicnotices).

### III. Proposed Penalty

31. 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 civil penalty of one hundred ten thousand dollars (\$110,000).

32. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which include such factors as the nature, circumstances, extent and gravity of the violations, 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

33. 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.

34. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (found at: <https://www.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>). 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).

35. If Respondent does not file an Answer to this Complaint within thirty (30) days after service, 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.

36. Respondent must send its Answer to this Complaint, including any request for a 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

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

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

38. 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. §§ 22.5 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

39. 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, including 40 C.F.R. §§ 22.50 through 22.52.

40. 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.

41. 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

42. 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 Rachel Matthews, of my staff, at (214) 665-8589.

43. 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 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.

44. 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.

3-14-19  
Date

  
Cheryl T. Seager  
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, Texas 75202-2733

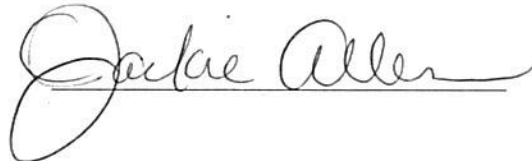
Copy by certified mail,  
return receipt requested: Mr. Michael O'Brien  
Wyman-Gordon Forging, Inc.  
10825 Telge Road  
Houston, TX 77095

Copy by mail: TCEQ Area Director, Region 12  
Kelly Keel Linden  
MC 172  
PO Box 13087  
Austin TX 78711-3087

Copy hand-delivered: Efren Ordóñez (Mail Code 6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Dated: \_\_\_\_\_

MAR 20 2019

  
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