

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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2011 JAN 11 PM 8:55
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EPA REGION VI

In the Matter of § Docket No. CWA-06-2010-1772
The Lauren Group, LLC, §
Respondent § Proceeding to Assess a
NPDES Permit No. LAR10E985 § Civil Penalty under Section 309(g)
§ of the Clean Water Act
§ 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 (“Act”), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has 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,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. § 22.50.

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. The Lauren Group, LLC, (“Respondent”) operates 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, Respondent owned or operated the New Center Park Subdivision, a twenty (20) acre construction site, located at East Kaliste Saloom Road, Lafayette Parish, Lafayette, 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 acted as a “point source” of “discharges” of “pollutants” with its storm water to the receiving waters of the Lafayette Municipal Separate Storm Sewer System (“MS4”) to an unnamed channel, then to the Vermilion River, which is 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 is, or was, 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 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(p) of the Act, 33 U.S.C. § 1342(p), requires that any discharge of storm water associated with an industrial activity must comply with the requirements of an NPDES permit.

8. As directed by Section 402(p) of the Act, 33 U.S.C. § 1342(p), EPA has issued regulations that further define requirements for NPDES permits for storm water discharges. The regulations include those codified at 40 C.F.R. §§ 122.21 and 122.26.

9. As specified in 40 CFR § 122.26(b)(14)(x), industrial activities include construction activity, with exceptions (not relevant in this case) regarding construction sites that disturb less than five acres.

10. Pursuant to 40 C.F.R. § 122.26(c), each person who discharges storm water associated with construction activity must obtain coverage to discharge under either an individual NPDES permit or a promulgated general permit.

11. Each person that meets the definition of “operator” and engages in construction defined as industrial activity by 40 C.F.R. § 122.26(b)(14)(x), must apply for and obtain NPDES permit coverage before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

12. The Louisiana Department of Environmental Quality (“LDEQ”) assumed the NPDES program on August 27, 1996 [63 F.R. 51164], and is the permitting authority for Louisiana (except Indian lands). Pursuant to the Louisiana Environmental Quality Act, as amended (La. R. S. 30:2001 et seq.) and the Act, as amended (33 U.S.C. 1251 et seq.), LDEQ issues NPDES General Permit coverage for “Storm Water Discharges From Construction Activities Five (5) Acres or More,” which became effective October 1, 2004 [LPDES LAR100000].

13. Respondent began construction activities at the facility on or about January 15, 2008, which continued throughout the time period relevant to this action.

14. Respondent applied for and was issued NPDES Permit No. LAR10E985 (“permit”) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on April 21, 2008. At all relevant times, 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.

15. On April 13, 2009, Respondent submitted to LDEQ a Notice of Termination requesting termination of the permit coverage regarding the facility.

16. Despite the Notice of Termination, Respondent continued construction activity at the Facility after April 13, 2009, and continued said activities at least until July 31, 2009. According to the LDEQ database that records all applications for storm water general permit coverage, Respondent did not have NPDES storm water permit coverage regarding the facility from January 15, 2008 to April 20, 2008 and from May 5, 2009 to at least July 31, 2009. Respondent had permit coverage from April 21, 2008 to April 12, 2009.

A. UNAUTHORIZED DISCHARGES OF STORM WATER

17. Because Respondent did not have authorization to discharge pollutants from the facility from January 15, 2008 to April 20, 2008, and from April 13, 2009 to at least July 31, 2009, each storm water discharge from the facility during these time periods is a violation of Section 301 of the Act, 33 U.S.C. § 1311. Rain events for the area indicate unauthorized discharges from the facility on at least ten (10) occasions between January 10, 2008 and July 17, 2009.

B. PERMIT VIOLATIONS

18. Part IV.B.1 of the permit requires the permittee to retain the Storm Water Pollution Prevention Plan (“SWPPP”) on-site at the facility.

19. Part IV.B.2 of the permit requires the permittee to post a notice regarding the permit near the main entrance of the construction site.

20. Part IV.D.4 of the permit requires the permittee to document inspections of the facility, including dates of inspections, observations regarding implementation of the SWPPP, description of incidents of non-compliance, etc.

21. On May 20, 2008, Respondent violated the following permit conditions as identified during an EPA inspection:

- i. Part IV.B.1 was violated when Respondent failed to present the SWPPP when the EPA inspector asked for it;
- ii. Part IV.B.2 was violated when Respondent failed to post notice near the main entrance; and
- iii. Part IV.D.4 was violated when Respondent failed to document inspections.

22. Part IV.D.2.a(1) of the permit requires that the permittee's erosion and sediment controls should be designed to retain sediment on-site to the maximum extent practicable.

23. Part IV.D.2.a(1)(c) of the permit requires the permittee to remove off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts in the event that sediment escapes the construction site.

24. Part IV.D.2.a(1)(e) of the permit requires that the permittee prevent litter, construction debris, and construction chemicals exposed to storm water from becoming a pollutant source for storm water discharges.

25. On or about August 22, 2008, Respondent violated the following conditions of the permit:

- i. Part IV.D.2.a(1) of the permit was violated when Respondent failed to have adequate erosion and sediment controls to keep sediment on site. Sediment escaped off-site through New Center Drive, an exit of the facility.
- ii. Part IV.D.2.a(1)(c) of the permit was violated when Respondent failed to remove sediment from New Center Drive and areas outside of the facility where sediment accumulated.
- iii. Part IV.D.2.a(1)(e) of the permit was violated when Respondent allowed construction debris to be scattered at the facility.

26. Part I.C.2 of the permit allows termination of permit coverage within thirty (30) days after one or more of the following conditions: (a) final stabilization has been achieved on all portions of the site; (b) another operator/permittee has assumed control over all areas of the site that have not been fully stabilized; or (c) for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

27. Part I.C.2 of the permit was violated when the Respondent submitted a Notice of Termination to LDEQ on May 5, 2009 because the conditions of termination did not exist: final stabilization had not been achieved, another operator/permittee had not assumed control over all areas of the site, or temporary stabilization had not been completed and the residence transferred to the homeowner.

28. Each violation of the conditions of the permit described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

29. On July 18, 2008, EPA issued to Respondent Administrative Order Docket Number CWA-06-2008-2016, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). That Order required Respondent to take the following actions within thirty (30) days of the effective date of the order: 1) submit a copy of the SWPPP, along with a copy of any inspections documented during the life of the project; 2) arrange a meeting with EPA to be held in the Region 6 office at 1445 Ross Avenue, Dallas, Texas; and (3) submit a written certification of compliance to the EPA, Region 6.

30. On or about January 14, 2009, Lafayette Consolidated Government issued a Cease and Desist Order to the Respondent for failure to remove all sediment from the MS4, and for failure to have all necessary Best Management Practices (“BMPs”) in place as required by the Notice of Non-Compliance issued December 29, 2008.

31. On or about June 30, 2009, Lafayette Consolidated Government conducted an inspection. Deficiencies included a failure to install BMPs at the front of the subdivision and construction sites, and a failure to clean and maintain BMPs at drain inlets.

32. On or about July 29, 2010, LDEQ conducted an inspection. Deficiencies included a failure to conduct inspections at least once every 14 calendar days, before anticipated storm events (or series of storm events, such as intermittent showers over one or more days) expected to cause a significant amount of runoff and within 24 hours of the end of a storm event of 0.5 inches or greater.

33. 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.

34. EPA has notified 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).

35. 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

36. 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 thousand dollars (\$100,000).

37. 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

38. 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.

39. 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).

40. 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 sixty (60) days after a Final Default Order is issued.

41. 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
Dallas, TX 75202-2733

42. 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

43. 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.

44. 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.

45. 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

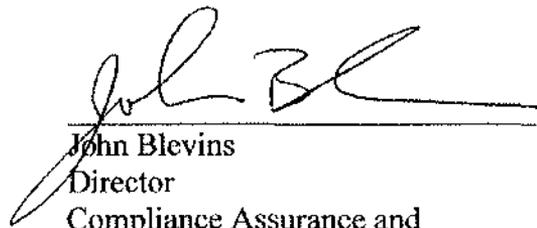
46. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed 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.

47. 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.

48. 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.

1.5.11
Date



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: Mr. Greg Gachassin, President
The Lauren Group, I.L.C
2014 W. Pinhook Road, Suite 605
Lafayette, LA 70508

Copy: Mr. Jeffrey Nolan
Environmental Supervisor
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, LA 70821-4312

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

Dated: 1/11/11 