

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED

In the Matter of  
  
Western Organics/Gro-Well Brands,  
a New Mexico company,  
  
Respondent  
  
NPDES Facility No. NMR05GW56

2011 OCT 12 AM 10:05  
Docket No. CWA-06-2011-1858  
REGIONAL HEARING CLERK  
EPA REGION VI  
§  
§  
§  
§ Proceeding to Assess a Class I  
§ 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 (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 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.

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. Western Organics/Gro-Well Brands ("Respondent") is a corporation doing business in the State of New Mexico, 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 Order (“all relevant times”), Respondent owned or operated a commercial composting facility located at 9000 Bates SE, in Albuquerque, Bernalillo County, New Mexico (“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 Barr Interior Drain, thence to the Rio Grande in Segment 20.6.4.106 NMAC, which is considered “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 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. Pursuant to Section 402(a) of the Act, EPA issued the General Permit for Storm Water Discharges Associated with Industrial Activity on September 29, 2008 ("permit"). The general permit authorized "storm water discharges associated with industrial 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. As specified in 40 C.F.R. § 122.26(b)(14)(ii), industrial activities include facilities engaged in the manufacturing of lumber and wood products.

10. At all relevant times, Respondent owned or operated a commercial composting facility operated in Sector A under Standard Industrial Classification ("SIC") code number 2499. Therefore, the relevant activity at the facility is "industrial activity" within the meaning of Section 402(p) of the Act, and 40 C.F.R. §§ 122.1 and 122.26(b)(14).

11. 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.

12. 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.

13. The facility began the relevant operations defined as industrial activity prior to October 2009, which continued throughout the time period relevant to this action.

14. According to the EPA 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 NPDES permit from September 28, 2008, to March 17, 2010.

15. Respondent applied for and was issued coverage under the permit described above, and was assigned NPDES Permit No. NMR05GW56, effective on March 17, 2010. Beginning on the effective date, Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the permit.

16. Part 1 of the permit required Respondent to prepare a Storm Water Pollution Prevention Plan ("SWPPP") for the facility before submitting a Notice of Intent ("NOI"). Part 4 of the permit requires routine, quarterly, and comprehensive site inspections. Part 5.1.2 of the permit requires that the SWPPP include a Site Description. Part 6 of the permit requires the facility to collect and analyze storm water samples and to document monitoring activities. This includes benchmark monitoring and monitoring for parameters specific to the Sector.

17. On January 27, 2011, the facility was inspected by the New Mexico Environment Department. As a result, the findings specified in the following paragraphs were made.

**A. UNAUTHORIZED DISCHARGES OF STORM WATER**

18. Because Respondent did not have authorization to discharge pollutants from the facility from at least October 5, 2008, to March 17, 2010, each storm water discharge from the facility during this time period 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 five (5) occasions between October 5, 2008, and March 17, 2010.

**B. PERMIT VIOLATIONS**

19. Part 4.1 of the permit was violated in that the facility failed to conduct routine weekly facility inspections.

---

20. Part 4.2 of the permit was violated in that the facility failed to conduct quarterly visual assessments of the storm water discharges.

---

21. Part 4.3 of the permit was violated in that the facility failed to conduct an annual comprehensive site inspection for the period ending September 28, 2011.

22. Part 8.A.4 of the permit was violated for failure to add to the site map such things as processing areas, treatment equipment storage areas, and a description of measures implemented to address wood product storage areas, residue storage areas, loading and unloading areas,

material handling areas, chemical storage areas, and equipment/vehicle maintenance, storage and repair areas.

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

24. Concurrently with this Complaint, EPA is issuing to Respondent Administrative Order Docket Number CWA-06-2011-1857, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). The Order requires Respondent to: 1) revise the SWPPP within thirty (30) days of the effective date of the Order; 2) submit to Region 6 a copy of the revised SWPPP; and 3) submit to Region 6 within forty-five (45) days a certification of compliance with the Order.

25. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), 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 \$37,500.

---

26. EPA has notified the NMED 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).

27. 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

28. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a penalty of ten thousand dollars (\$10,000.00).

29. 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 included 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

30. 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.

31. 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).

32. 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.

33. 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:

---

Ms. Ellen Chang-Vaughan (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

---

34. 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

35. 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.

---

36. 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.

---

37. 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

38. 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

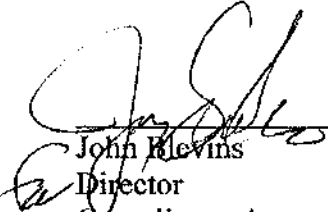
conference on the matters described in this Complaint, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

39. 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.

40. 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.

OCT 07 2011

Date

  
\_\_\_\_\_  
John E. Levins  
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. Alan Langer, CFO  
Western Organics/Gro-Well Brands  
420 East Southern Avenue  
Tempe, AZ 85282

Copy: Mr. James Bearzi  
Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Copy hand-delivered: Ms. Ellen Chang-Vaughan (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Dated: OCT 12 2011

