

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

75 Hawthorne Street
San Francisco, California 94105

_____)	
IN THE MATTER OF:)	Docket No. CWA 309(a)-08-020
)	
Baker Commodities, Inc.)	FINDINGS OF VIOLATION
Pier D Berth 30)	AND
Long Beach, CA 90802)	ORDER FOR COMPLIANCE
)	
AND)	Proceedings under Section 308(a) and 309(a)
)	of the Clean Water Act, as amended, 33
Port of Long Beach)	U.S.C. Sections 1318(a), and 1319(a)
925 Harbor Plaza)	
Long Beach, CA 90802)	
_____)	

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

FINDINGS OF VIOLATION

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with the Act, including Section 402, 33 U.S.C. § 1342.
2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at

40 CFR § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 CFR § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States. Pursuant to 40 CFR §§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. General warehousing and storage, Standard Industrial Classification (SIC) 4225, is an industrial activity subject to the discharge and permitting requirements under 40 CFR § 122.26(b)(14)(xi) and Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations authorize EPA to, inter alia, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.
6. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activity.
7. The State of California has an EPA-approved NPDES program, and issues permits, including storm water permits, through its State Water Resources Control Board (State Board) and nine Regional Water Quality Control Boards (Regional Boards). Since 1991, the State Board has adopted two successive statewide NPDES general permits for discharges of storm water associated with industrial activity. The permit that is currently effective, General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (General Permit), was adopted on April 17, 1997.
8. All facility operators seeking coverage under the General Permit must submit a notice of intent to comply (NOI) to the State Board 14 days prior to commencing industrial operations. Facility operators that do not submit an NOI must submit an application for an individual NPDES permit. (General Permit, Provision E(1), pg. 6 and Attachment 3 to the General Permit).
9. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (General Permit, Section A(1)(a), pg. 11). The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges.

10. The SWPPP must include, *inter alia*, a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source as well as a site map (or maps) that identifies: (a) facility boundaries and an outline of facility drainage areas, (b) the storm water collection and conveyance system, (c) an outline of impervious areas, (d) locations where materials are directly exposed to precipitation, and (e) areas of industrial activity. (General Permit, Section A(4), pg. 12, 13 and Section A(8), pg. 17).
11. Facility operators must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. (General Permit, Effluent Limitation B(3), pg. 4).
12. Facility operators must develop a written monitoring program, and must conduct quarterly visual observations of non-storm water discharges, monthly visual observations of storm water events, and prescribed storm water sampling and analysis. (General Permit, Section B(1), (3), (4), and (5), pg. 24-27). In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit, Section B(14), pg. 35). A copy of the written monitoring program as well as records of inspections, steps taken to reduce or prevent discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit, Section B(13), pg. 34).
13. The Port of Long Beach (Port) is a division of the City of Long Beach, a municipality and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5). The majority of the property within the Port’s boundaries is owned by the Port and leased to tenants operating in various industrial categories. The remaining properties are privately owned and operated.
14. The Port submitted an NOI to the State Board on April 6, 1992, filing for General Permit coverage on its behalf and that of its tenants. The State Board assigned the Port Waste Discharge Identification Number (WDID) 419I003628.
15. As the permittee, the Port manages a Master Storm Water Program that implements certain requirements of the General Permit. The Port conducts sampling and analysis at its 22 storm water outfalls as well as quarterly non-storm water discharge and monthly storm water discharge observations. Facilities that elect to participate in the Port’s Master Storm Water Program must develop and implement facility-specific SWPPPs and monitoring programs and must conduct quarterly non-storm water discharge and monthly storm water discharge observations at their facilities.
16. Baker Commodities, Inc. (Baker Commodities), is a Delaware corporation licensed to do

business in California and is thus a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

17. Baker Commodities operates a facility located at Pier D Berth 30 in Long Beach, California (Facility). Baker Commodities is a tenant at the Port and participates in the Port’s Master Storm Water Program. Baker Commodities stores and exports animal fats and tropical oils at the Facility, an industrial activity classified under SIC 4225.
18. Rainfall events at the Facility that exceed 0.1 inches are generally sufficient to generate storm water runoff. Data from the Long Beach Airport Weather Monitoring Station, approximately five miles from the Facility, indicate that there were at least 95 days with 0.1 inches or more of rainfall at the Facility from November 1, 2002 through April 30, 2007.
19. Storm water runoff at the Facility discharges through storm drains to the Long Beach Harbors (Harbor). The storm drains are owned by the City of Long Beach and are part of its municipal separate storm sewer system (MS4). The Facility’s storm drains and the City of Long Beach’s MS4 are “point sources” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The storm water discharged from the Facility contains “pollutants”, including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is storm water discharge associated with industrial activity as defined by EPA regulations in 40 CFR § 122.26(b)(14).
21. The Harbor, including the outer and inner harbors, is a "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “waters of the United States” as defined by EPA regulations in 40 CFR § 122.2.
22. On May 15, 2007, a representative of the EPA inspected the Facility to evaluate Baker Commodities’ and the Port’s (jointly the Respondents) compliance with the General Permit. The inspection report is attached and incorporated by reference, and contains evidence that Respondents:
 - a. Failed to develop a complete SWPPP, in that the SWPPP contained neither complete assessment nor description of potential pollutants sources (Section A.6 and A.7); and
 - b. Failed to adequately implemented BMPs identified in the SWPPP (Effluent Limitation B.3 and Section A.1). The SWPPP specifies implementation of a Spill Prevention, Control, and Countermeasures (SPCC) Plan. The Facility representative was unaware of, nor could produce for review, the specified SPCC Plan.

23. Based on the foregoing, EPA has determined that, by violating the General Permit, Respondent has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violations and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Section 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ordered that Respondents comply with the following requirements:

24. Immediately upon receipt of this Order, Respondents shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.
25. Within 30 days of the receipt of this Order, one of the Respondents shall submit a revised SWPPP that fully complies with the General Permit. The SWPPP revisions shall include, among all other required elements, a complete assessment and description of potential pollutants sources.
26. Within 30 days of the receipt of this Order, one of the Respondents shall submit a SPCC Plan that fully complies with the terms and conditions set out at 40 C.F.R Part 112, and shall immediately and fully implement the SPCC Plan as is specified in the Facility's SWPPP.
27. One of the Respondents shall make visual observations of storm water discharges, as required by Section B(4) of the General Permit, at all of the Facility's drainage areas. Additionally, one of the Respondents shall conduct site-specific sampling and analysis of storm water discharges at the Facility consistent with Section B(5) of the General Permit. The sampling and analysis will supplement monitoring conducted by the Port under its storm water monitoring program.
- a. The sampling and analysis of storm water discharges at the Facility shall be implemented by one of the Respondents for at least one year.
 - b. Following one year of sampling and analysis, Respondents may make a written request to EPA to use the Port of Long Beach's monitoring plan to meet its monitoring requirements.
28. Within 60 days of the receipt of this Order, one of the Respondents shall submit a report to EPA on the costs: of revising the SWPPP; development of the SPCC Plan (if any); projected incremental costs associated with implementation of the revised SWPPP; projected incremental costs associated with implementation of the SPCC Plan; and any other costs associated with complying with this Order.

29. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of the submitting Respondent (as specified by 40 CFR § 122.22 (b)(2)) and shall include the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

30. All submissions requested by this Order shall be mailed to the following address:

U. S. Environmental Protection Agency - Region 9
Clean Water Act Compliance Office WTR-7
75 Hawthorne Street
San Francisco, CA 94105
Attention: Jeremy Johnstone

All telephone inquiries should be made to Jeremy Johnstone, Senior Environmental Engineer, at (415) 972-3499

31. A copy of all submissions required under this Order shall be sent to:

California Regional Water Quality Control Board – Los Angeles Region
Coastal Storm Water Unit
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Attention: Ivar Ridgeway

32. This Order shall be binding upon Respondents and Respondents’ officers, directors, agents, employees, heirs, successors, and assigns.
33. This Order is not a permit under the CWA, and does not waive or modify Respondents’ obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.

- 34. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
- 35. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).
- 36. Respondents may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
- 37. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a),(b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
- 38. This Order shall become effective upon the date of receipt by the Respondents.

_____/s/_____
Alexis Strauss
Director, Water Division

____11/09/07_____
Date