

US EPA ARCHIVE DOCUMENT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

APM Terminals North America, Inc.
2500 Navy Way
Terminal Island, CA 90731-7554

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Docket No. CWA 309(a)-08-017

**FINDINGS OF VIOLATION
AND
ORDER FOR COMPLIANCE**

Proceedings under Section 308(a) and 309(a)
of the Clean Water Act, as amended, 33
U.S.C. Sections 1318(a), and 1319(a)

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. Marine cargo handling, Standard Industrial Classification (SIC) 4491, falls under SIC Major Group 44 and, pursuant to 40 CFR § 122.26(b)(14)(viii), is an industrial activity subject to the discharge and permitting requirements under 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. Industrial storm water dischargers 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 Los Angeles (Port) is a division of the City of Los Angeles, 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 does not assume responsibility for compliance with storm water requirements at any of its tenant facilities. Therefore, industrial operators within the Port’s boundaries must independently obtain coverage under the General Permit.
 15. APM Terminals North America, Inc. (APM Terminals or Respondent) 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).
 16. APM Terminals operates a facility within the Port’s boundaries, located at 2500 Navy Way (Pier 400), Terminal Island, California (Facility). APM Terminals has operated at the Facility since August 2002. Respondent is engaged in marine cargo handling at the Facility, an industrial activity classified under SIC 4491.
 17. Respondent submitted an NOI to the State Board on or about March 23, 2003. The State Board assigned Waste Discharge Identification (WDID) Number 419I018069 to Respondent for the Facility on April 8, 2003.

18. Rainfall events at the Facility that exceed 0.1 inches are generally sufficient to generate storm water runoff. Data from the Torrance Municipal Airport Weather Monitoring Station, approximately six miles from the Facility, indicate that there were 90 days with more than 0.1 inches of rainfall at the Facility from November 1, 2002 through April 30, 2007. Further, there were at least 12 days with rain of 0.1 inches or more from November 1, 2002 through March 23, 2003, the date on which Respondent submitted its NOI to the State Board.
19. Storm water runoff at the Facility discharges through storm drains located at the Facility to the Los Angeles Harbor (Harbor). The storm drains are owned by the City of Los Angeles and are part of its municipal separate storm sewer system (MS4). The Facility's storm drains and the City of Los Angeles' 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 water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined by EPA regulations in 40 CFR § 122.2.
22. Portions of the Harbor have been listed under Section 303(d) of the Act, 33 U.S.C. § 1313(d), as an impaired water body for lead, copper and zinc, among other pollutants.
23. On May 17, 2007, a representative of EPA, accompanied by staff from the Port and the City of Los Angeles (Watershed Protection Division), inspected the Facility to evaluate Respondent's compliance with the General Permit. The inspection report is attached and incorporated by reference, and contains evidence that Respondent:
 - a. Failed to develop a complete SWPPP, as required by the General Permit (Section A, pg. 11-23), including:
 1. Failed to develop or include a site map, as required by the General Permit (Section A(4), pg. 12);
 2. Failed to include the signature of the responsible party, as required by the General Permit (Section C, pg. 9-10);
 - b. Failed to implement adequate BMPs at the Facility as required by the General Permit (Section A, pg. 11-23), including:
 1. Failed to implement adequate BMPs at the lube oil station in order to prevent/minimize spillage that could discharge to a nearby storm drain inlet;
 2. Failed to repair cracks and adequately maintain the curb dike at the west end of the fuel island, allowing product to leak through the curb dike and potentially discharge to a nearby storm drain inlet.
 3. Failed to keep a filler hose at the end of the fuel island within the diked area,

- creating the potential for dripping to an uncontained area;
4. Failed to keep drip pans/pads under the Facility's mobile fuel trucks parked outside of the Facility administration building. The inspection team observed leakage from the fuel trucks;
 5. Failed to restrict equipment washing outside of the designated containment area;
- c. Failed to conduct its annual comprehensive site compliance evaluations or submit and retain copies of the evaluations, as required by the General Permit (Section A(9), pg. 21, 22); and
 - d. Failed to comply with the Monitoring Program and Reporting Requirements (Monitoring Program) of the General Permit (Section B, pg. 24-45), including:
 1. Failed to conduct sampling or maintain records of sampling activities at all storm water discharge locations, as required by the General Permit (Section B(5)(a), pg. 26, and Section B(13), pg. 34);
 2. Failed to conduct non-storm water visual observations and storm water discharge visual observations or maintain records of such observations, as required by the General Permit (Section B(3) and B(4), pg. 25, 26, and Section B(13), pg. 34).
24. EPA has developed a set of parameter benchmark values (PBVs), based primarily upon water quality criteria, to measure the adequacy of a permittee's storm water controls. (See "Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice" (MSGP 2000); Federal Register Vol. 65, No. 210, October 30, 2000, pp. 64766-64767.) Exceedances of PBVs are intended to alert permit-holders to the need to improve BMPs. The State of California has adopted EPA's parameter benchmark values under its stormwater program (<http://www.waterboards.ca.gov/stormwtr/docs/smanlrdc.pdf>). A review of Respondent's annual storm water monitoring reports indicates that it exceeded PBVs for aluminum, iron, and zinc in monitoring years 2004-2005, 2005-2006, and 2006-2007. There is no evidence that Respondent evaluated the adequacy of its BMPs in light of these exceedances.
25. Based on the foregoing, EPA has determined that Respondent has violated the CWA as follows:
- a. Respondent's discharge of storm water associated with an industrial activity prior to obtaining an NPDES permit (from August 2002, to March 23, 2003) violated Section 301(a) of the Act, 33 U.S.C. § 1311(a);
 - b. Respondent's failure to submit an NOI for coverage under the General Permit before commencing industrial operations at the Facility violated Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21;
 - c. Respondent's failure to develop and implement an adequate SWPPP while engaged in industrial activity at the Facility after March 23, 2003 violated the General Permit (Provision E(2), pg. 6, and Section A, pg. 11-23), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act,

- 33 U.S.C. § 1311(a);
- d. Respondent's failure to develop and implement adequate BMPs at the Facility violated the General Permit (Effluent Limitation B(3) pg. 4), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a); and
 - e. Respondent's failure to develop and implement an adequate Monitoring Program while engaged in industrial activity at the Facility after March 23, 2003, violated the General Permit (Provision E(3) pg. 6, and Section B, pg. 24-45), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus 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 Respondent comply with the following requirements:

26. Immediately upon receipt of this Order, Respondent shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.
27. Within 30 days of receipt of this Order, Respondent shall complete interim cleanup and housekeeping measures (Interim Measures) for all of the Facility's areas of industrial activity, including:
 - a. Clean up spills at the lube oil station;
 - b. Repair the cracked berm at the west side of the fuel storage area;
 - c. Clean up accumulated trash and debris throughout the Facility;
 - d. Clean up spills at all fuel truck parking locations; and
 - e. Park trucks over drip pans or within a contained area.
28. Within 30 days of receipt of this Order, upon completion of the Interim Measures, Respondent shall submit a Notice of Completion, which shall include a list of the Interim Measures taken, the date each Interim Measure was completed, the person(s) responsible for overseeing completion of each Interim Measure, and copies of documents associated with the completion of the Interim Measures, such as contracts, permits, manifests, and photographs.
29. In performing the Interim Measures, care shall be taken to ensure they do not cause or contribute any runoff to waters of the United States, the municipal storm drains, or the municipal sewer system. Care shall be taken to ensure compliance with all applicable federal, state, and local waste storage and disposal requirements.

30. Within 60 days of the receipt of this Order, Respondent shall submit a revised SWPPP that fully complies with the General Permit. The SWPPP revisions shall include, among all other required elements:
- A facility site map;
 - Adequate BMPs for the lube oil station in order to minimize spills and drippage;
 - BMPs to address all sources of storm water pollution, including aluminum, iron and zinc so as to ensure that discharges do not exceed established PBVs; and
 - A signature and certification for the SWPPP by Respondent's appropriate representative.
31. Within 60 days of the receipt of this Order, Respondent shall submit a revised written Monitoring Program that fully complies with the General Permit. The Monitoring Program revisions shall include, among all other required elements, a new sampling location on the west side of the maintenance area.
32. Within 60 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with: development of the revised SWPPP; projected incremental annual costs associated with implementation of the revised SWPPP; development of the revised Monitoring Program; projected incremental annual costs associated with implementation of the revised Monitoring Program; and any other costs associated with complying with this Order.
33. Within 60 days of receipt of this Order, Respondent shall submit a certified statement indicating the date of its commencement of industrial activities at the Facility.
34. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of 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."

35. 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

36. Respondents shall send a copy of all submissions required under this Order 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

37. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.
38. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.
39. 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.
40. 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).
41. Respondent 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.

- 42. 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.
- 43. This Order shall become effective upon the date of receipt by Respondent.

_____/s/_____
Alexis Strauss
Director, Water Division

____11/09/07_____
Date