

US EPA ARCHIVE DOCUMENT

§§ 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. Petroleum bulk storage facilities and terminals, categorized under Standard Industrial Classification (“SIC”) 5171, is an industrial activity subject to the discharge and permitting requirements under 40 CFR § 122.26(14)(viii) 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 fourteen 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 (the “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, all industrial operators within the Port’s boundaries must independently obtain coverage under the General Permit.
 15. General Petroleum Corporation (“Respondent”) is a Delaware corporation licensed to do business in California, and is then a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).
 16. Respondent is primarily engaged in the wholesale distribution of liquid petroleum products, and operates a bulk petroleum facility within the Port’s boundaries, located at 1028 Seaside Avenue, Terminal Island, California (“the Facility”). The Facility has petroleum storage capacity exceeding 100,000 gallons and falls within SIC code 5171. Respondent has operated the Facility, which is located within the boundaries of the Port, since 1946. The Facility supplies diesel fuel and lubricants to tugs and barges in Los Angeles Harbor (the “Harbor”).
 17. Rainfall events at the Facility that exceed 0.1 inches generate storm water runoff. Data from the Torrance Municipal Airport Weather Monitoring Station, approximately 6 miles

from the Facility, indicate that there were at least 90 days with 0.1 inches or more of rainfall at the Facility from November 1, 2002 to April 30, 2007.

18. Storm water runoff on the eastern side of the Facility discharges to the Harbor directly through the Facility's storm drains. Storm water run off from the north west area of the Facility collects and drains to the Harbor through the City of Los Angeles' municipal separate storm sewer system ("MS4") on South Seaside Avenue. 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).
19. 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).
20. The Harbor, including the inner and outer 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.
21. On May 17, 2007, staff from EPA Region 9 inspected the Facility to evaluate compliance with the General Permit. The inspection report is attached and incorporated by reference, and contains evidence of the following:
 - a. Respondent has never submitted an NOI to the State Board or otherwise sought or received NPDES permit coverage for the Facility.
22. Based on the foregoing, EPA has determined that, by failing to acquire an NPDES permit and by discharging pollutants without a permit, Respondent has violated Sections 301(a) and 308(a) of the Act, 33 U.S.C. §§ 1311(a) and 1318(a).

ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violation 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 Sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ordered that Respondent comply with the following requirements:

23. Immediately upon receipt of this Order, if it has not already done so, Respondent shall submit an application to the State of California for NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities. Instructions and necessary forms maybe be viewed and obtained at <http://www.swrcb.ca.gov/stormwtr/industrial.html>. Immediately upon receipt of NPDES permit coverage from the California State Water Resources Control Board (CA SWRCB), Respondent shall send a written notice of receipt of coverage to EPA.

24. Immediately upon receipt of NPDES permit coverage for the discharges of storm water associated with the Facility's industrial activities, Respondent shall take all necessary measures to achieve continuous compliance with all terms and conditions of the NPDES permit.
25. Within ten (10) days of receipt of NPDES permit coverage, Respondent shall submit to EPA, the SWPPP, and Storm Water Monitoring Program, as required by Sections A and B of the General Permit. These shall each be prepared by a qualified professional and fully comply with permit requirements. The SWPPP shall specifically include, but not be limited to, the following elements:
 - a. A cover and containment system at the waste oil storage area, as necessary to prevent discharges of pollutants through the storm sewer, and
 - b. BMPs to contain spills in the dock area, and to the extent practicable, minimize discharge through the drains on the dock.
26. EPA and/or the Regional Board may require Respondent to make modifications to the SWPPP and/or the Monitoring Program. Unless otherwise specified by EPA or the Regional Board, Respondent shall, within fifteen (15) days of receipt of comments from EPA or the Regional Board, incorporate the modifications into the SWPPP and monitoring program and implement the modifications.
27. Within forty-five (45) days of receipt of this Order, Respondent shall submit the following to EPA:
 - a. All documents relating to any and all discharges or spills by the Facility since January 1, 2003, including and not limited to: internal communications, consultant reports, and communications with any federal, state, or local regulatory agency.
 - b. All documents relating to any and all drains, sumps, and surface water collection systems located at the Facility, including and not limited to: internal communications, design and construction documents, location maps, operating instructions, cleaning practices, contracts, invoices for repair, cleaning of facilities, disposal of wastes, drawings, correspondence, maintenance records, and consultant reports.
 - c. All documentation of off-site transfers of wastewater from the Facility's oily water catch basin since January 1, 2003.
28. Within forty-five (45) days of receipt of any NPDES storm water permit coverage for the Facility, Respondent shall submit:
 - a. Detailed costs for developing any SWPPP required under the permit;
 - b. Detailed cost estimates, including estimated capital, one-time, and annual costs, for implementing the SWPPP;
 - c. Detailed costs for developing the monitoring required under the permit;

- d. Detailed cost estimates, including estimated capital, one-time, and annual costs for implementing the monitoring program; and
 - e. All documents, including without limitation, internal communications, consultant reports, and communications with any regulatory agencies, concerning the NPDES permit and Respondent's coverage there under.
29. 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 the 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
Attn: Sandy Chang

All telephone inquiries should be made to Sandy Chang, Environmental Engineer, at (415) 972-3016.

31. Respondent 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

32. This Order shall be binding upon Respondent and Respondent's officers, directors, agents, employees, heirs, successors, and assigns.

33. 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.
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 Respondent.

 Alexis Strauss, Director
 Water Division

 Date