

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-09-2010-0003
)
)

A Plus Materials Recycling

) **COMPLAINT, NOTICE OF PROPOSED**
) **PENALTY, AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**

250 Port Road 23
Stockton, California, 95203

Respondent.

) Proceedings Under Section 309(g)(2)(B) of the
) Clean Water Act, as amended, 33 U.S.C. §
) 1319(g)(2)(B)
)

COMPLAINT

Statutory Authority

The United States Environmental Protection Agency (“EPA”) issues this Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g). The authority to take action under Section 309(g) of the Act, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 9, who in turn has delegated it to the Director of the Water Division of EPA, Region 9, who hereby issues this Complaint.

Statutory and Regulatory Framework

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States except as in compliance with the Act, including compliance with a permit issued pursuant to Section 402 of the Act, 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 of the Act, 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 C.F.R. § 122.26, require NPDES permit authorization for discharges of stormwater

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

4. Scrap recycling and waste material facilities, Standard Industrial Classification (SIC) Code 5093, fall under SIC Major Group 50 and, pursuant to 40 C.F.R. § 122.26(b)(14)(vi), are industrial activities subject to the discharge and permitting requirements under Section 402(p) of the Act, 33 U.S.C. § 1342(p). Ready-mix concrete production, SIC Code 3273, pursuant to 40 C.F.R. § 122.26(b)(14)(vi), is an industrial activity subject to the discharge and permitting requirements under Section 402(p) of the Act, 33 U.S.C. § 1342(p).
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 C.F.R. § 122.21, any person who discharges or proposes to discharge stormwater associated with industrial activity must submit an application for an NPDES permit 180 days before the date on which the discharge is to commence.
7. The State of California has an EPA-approved NPDES program, and issues permits, including stormwater permits, through its State Water Resources Control Board (“State Board”) and nine Regional Water Quality Control Boards (“Regional Boards”). On April 17, 1997, the State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (“General Permit”), the current statewide NPDES permit for stormwater discharges associated with industrial activity.
8. All facility operators seeking coverage under the General Permit must submit a *Notice of Intent to Comply with the Terms of the General Permit for Storm Water Discharges Associated with Industrial Activity* (“NOI”) to the State Board fourteen (14) days prior to commencing industrial operations. A facility operator that does not submit an NOI must submit an application for an individual NPDES permit. (General Permit, Order Provision E(1), pg. 6 and Attachment 3 to the General Permit).
9. The General Permit requires facility operators to develop and implement a stormwater pollution prevention plan (“SWPPP”) prior to discharging stormwater from their industrial operations. (General Permit, Order Section A(1)(a), pg. 11). The purpose of the SWPPP is to identify sources of industrial stormwater pollution and identify site-specific best management practices (“BMPs”). The SWPPP must include, *inter alia*, a narrative description of the stormwater BMPs to be implemented at the facility for each potential pollutant and its source. (General Permit, Order Section A(8), pg. 17).

10. The General Permit requires facility operators to reduce or prevent pollutants associated with industrial activity in their stormwater discharges and authorized non-stormwater discharges by implementing best available technology economically achievable (“BAT”) for toxic and non-conventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. Development and implementation of a SWPPP that complies with the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement. (General Permit, Order Provision B.3, pg. 4).
11. The General Permit requires facility operators to include a clear and understandable site map in the SWPPP that includes, *inter alia*, an identification of the location of municipal storm drain inlets, direction of stormwater flow, and areas of industrial activity, including the location of fueling areas, material handling and processing areas, waste treatment and disposal areas, and other areas of industrial activity which are potential pollutant sources. (General Permit, Order Section A(4), pp. 12-14).
12. The General Permit requires facility operators to include a narrative description of the stormwater BMPs to be implemented at the facility for each potential pollutant and its source. (General Permit, Order Section A(8), pp. 17-21).
13. The General Permit requires facility operators to revise the SWPPP “whenever appropriate” and to ensure that it is readily available for review by facility employees or inspectors. (General Permit, Order Section A(2), pg. 12). Information gathered during monitoring and inspections should be used to determine appropriate revisions to the SWPPP. (General Permit, Order Sections B(3) and (4), pp. 25-26).
14. The General Permit requires facility operators to develop and implement a written monitoring program when the industrial activities begin. (General Permit, Order Section B(1)(a), pp. 24-25). As part of this monitoring program, facility operators must conduct quarterly visual observations of non stormwater discharges, monthly visual observations of stormwater events, and prescribed stormwater sampling and analysis. (General Permit, Order 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, Order 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, Order Section B(13), pg. 34).
15. The General Permit requires all facility operators to collect and analyze stormwater samples for total suspended solids (“TSS”), pH, and total organic carbon (“TOC”) (oil and grease may be substituted for TOC). (General Permit, Order Section B(5), pp. 26-27). The General Permit also requires facility operators coming under SIC Code 5093 to collect and analyze stormwater samples for iron, lead, aluminum, copper, zinc and chemical oxygen demand (“COD”), and facility operators coming under SIC Code 3273 (Ready-Mixed Concrete) to collect and analyze stormwater samples for iron. (General Permit, Order Section B(5), pg. 27, and Table D, pg. 43).

Factual Background

16. A Plus Materials Recycling (“Respondent”) is a California corporation.
17. Respondent operated a scrap material processing facility (the “Facility”) at 250 Port Road 23, at the Port of Stockton in Stockton, California. Respondent was engaged in scrap material recycling, classified under SIC Code 5093 (Scrap and Waste Materials), at the Facility from at least January 2004 to at least June 14, 2010, and was engaged in ready-mix concrete production, classified under SIC Code 3273, from at least Spring 2006 to April 2009. Respondent ceased operations at the Facility on or about June 14, 2010.
18. The Facility covered approximately eight acres of land. Bulk metals and wood materials were stored outside in large piles in the Facility's main yard and at a four-acre parcel immediately east of the Facility. Respondent used heavy machinery including backhoes and crushers to segregate concrete, asphalt, wood and greenwaste. Processing areas were separated into a concrete batch plant production area, a concrete and asphalt recycling area, a wood, greenwaste and demolition recycling area, and a rock and sand storage area.
19. Stormwater discharges from scrap recycling facilities, SIC Code 5093, may contain the following pollutants: TSS, pH, TOC, specific conductance, iron, lead, aluminum, copper, zinc and COD, and other “pollutants,” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6). Stormwater discharges from ready-mix concrete facilities, SIC Code 3273, may contain the following pollutants: TSS, pH, TOC, specific conductance, iron, lead, aluminum, copper, zinc and COD, and other “pollutants,” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
20. Rainfall data from the Stockton Metro Airport Weather Monitoring Station, located approximately six miles north of the Facility, indicate that the Facility experienced at least 158 days of 0.1 inches or more of rainfall during the period of September 30, 2005 through May 31, 2010.
21. Stormwater drained from the main site through storm drains located in the concrete and asphalt recycling area and the wood and greenwaste recycling area. Stormwater runoff from the main site and the four-acre parcel also discharged into offsite storm drains. The storm drains are part of the Port of Stockton’s municipal separate storm sewer system and lead to a concrete conveyance channel (the “South Ditch”) that flows to a retention basin, which discharges to the tidally-influenced Stockton Ship Channel. The Stockton Ship Channel is a direct tributary of the tidally-influenced San Joaquin River.
22. The Stockton Ship Channel is listed as an “impaired” water for, among other things, chlorpyrifos, DDT, diazinon, dioxin, exotic species, furan compounds, group A pesticides, mercury, pathogens, PCBs, and unknown toxicity, by the State of California pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d).
23. On July 30, 2003, Respondent submitted an NOI to the State Board seeking coverage under the General Permit for the Facility. On July 30, 2003, the Central Valley Regional Water Quality Control Board (“Regional Board”) granted Respondent coverage under the General Permit and assigned it Waste Discharge Identification (“WDID”) Number 5S39I018275 for

the Facility. Respondent's NOI incorrectly categorized its operations under SIC 2499 (Wood Products, Not Elsewhere Classified) and SIC 3275 (Gypsum Products), instead of SIC 5093 (Scrap and Waste Materials) and SIC 3273 (Ready-Mixed Concrete).

24. On March 19, 2008, representatives of EPA Region 9 and the Regional Board inspected the Facility to evaluate Respondent's compliance with the General Permit. Respondent's SWPPP for the Facility did not include an adequate site map, a comprehensive listing of all potential pollutant sources and appropriate BMPs for each, or a written monitoring plan, and was not signed.
25. EPA observed that Respondent had not implemented and/or maintained BMPs: at the acid wash station in the concrete manufacturing area in order to prevent track-out and prevent the comingling of stormwater discharges with concrete wash water; at the soil stockpiles to prevent sediment from washing out and entering storm drain inlets; and at the materials recycling area to prevent pollutants from entering storm drain inlets.
26. EPA observed that Respondent failed to comply with the Monitoring Program and Reporting Requirements of the General Permit by failing to collect and analyze stormwater samples at least twice per wet season. Respondent failed to sample stormwater for the conventional pollutants required by the General Permit (Section B(5)(c)(i), for iron, an additional analytical parameter required for all segments of the Concrete, Gypsum, and Plaster Products sector, which includes ready-mix concrete, and for aluminum, lead, copper, zinc and COD, the additional parameters required for scrap recycling facilities (SIC 5093). Respondent did not certify that it met either of the Section B(5)(c)(iii) conditions that might justify the failure to sample for the additional parameters. Respondent was also unable to produce records of quarterly non-stormwater visual observations and monthly stormwater discharge visual observations at the inspection.
27. On July 17, 2008, EPA transmitted a copy of the March 19, 2008 inspection report to Respondent. On August 6, 2008, Respondent responded to the report, stating that it had signed and certified the SWPPP, added a description of all BMPs used at the Facility and modified the site map to include the adjacent parcel and the locations of all storm drains. Respondent stated that it had placed large concrete blocks to protect the acid wash area from vehicular traffic, and constructed a concrete bunker to contain acid wash water. On December 15, 2008, Respondent collected its first stormwater sample. Respondent stated that it did not collect and analyze stormwater samples prior to August 6, 2008.
28. On December 15 and 16, 2008, Respondent collected stormwater samples at its Facility, but failed to have those samples analyzed for the six additional pollutant parameters required for facilities classified under SIC Codes 5093 and 3273: iron, lead, aluminum, copper, zinc, and COD.
29. On January 8, 2009, EPA issued Respondent a Findings of Violation and Order for Compliance, EPA Docket No. CWA 309(a)-09-004 (the "Order"), that required Respondent to bring the Facility into compliance with the General Permit by, *inter alia*, implementation of adequate BMPs at the acid wash station, construction materials and soil storage area and the concrete manufacturing area, as well as installation of adequate BMPs for all storm drain

inlets. The Order required Respondent to submit a copy of the SWPPP as it existed during the March 19, 2008 inspection and a revised SWPPP and Monitoring Program.

30. Respondent submitted a notice of completion of interim measures on January 23, 2009 stating that Respondent had: removed all acid wash products from service; capped one storm drain inlet near the construction materials recycling area; installed BMPs at all storm drain inlets; removed bulk materials stockpiled at the adjacent four-acre parcel; and graded the adjacent parcel to promote stormwater retention. Respondent submitted a revised SWPPP and Monitoring Program, but the site map did not show directions of flow, and the monitoring program did not include the locations and explanations for designated sampling locations.
31. On April 3, 2009, EPA requested data that was missing in Respondent's January 23, 2009 response including a site map showing the direction of stormwater flow and a complete Monitoring Program. Respondent submitted further information on April 6, 2009.
32. On September 25, 2009, EPA representatives inspected the Facility and observed that the ready-mix concrete operation was no longer in production, although ready-mix infrastructure remained onsite.
33. On October 13, 2009, December 12, 2009, and April 2, 2010, Respondent collected stormwater samples at the Facility, but failed to have those samples analyzed for the six additional pollutant parameters required for facilities classified under SIC Code 5093: iron, lead, aluminum, copper, zinc, and COD. Respondent did have the samples analyzed for pH, specific conductance, TOC, and TSS.
34. Analysis of the October 13, 2009, December 12, 2009 and April 2, 2010 stormwater samples showed that all of the samples exceeded EPA's parameter benchmarks values for specific conductance, and several samples additionally exceeded EPA's parameter benchmarks values for TOC and TSS.

Violation: Failure to Comply with the General Permit

35. The facts stated in Paragraphs 1 through 34 are incorporated herein.
36. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States except as in compliance with the Act, including compliance with a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
37. Stormwater runoff from the Facility contained "pollutants" as defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).
38. Stormwater runoff from the Facility to storm drains and the Stockton Ship Channel is a "stormwater discharge associated with an industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(xi).

39. The Facility's storm drains and the Port of Stockton's municipal separate storm sewer system are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
40. Respondent is a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
41. The Stockton Ship Channel is a "navigable water" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined by EPA regulations at 40 C.F.R. § 122.2.
42. Rainfall data indicate there were at least 158 days with 0.1 inches or more of rainfall at the Facility from September 30, 2005 to May 31, 2010. Upon information and belief, each rainfall event resulting in 0.1 inches or more of rainfall at the Facility generated stormwater associated with industrial activity that discharged into and added pollutants to the Stockton Ship Channel and the San Joaquin River.
43. Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a) by failing to comply with the requirements of the General Permit, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, as set forth below:

Failure to Develop an Adequate SWPPP

44. The General Permit (General Permit, Order Section A, pp. 11-23) requires Respondent to develop and implement a complete and adequate SWPPP to minimize the discharge of pollutants in stormwater runoff and to maintain compliance with the conditions of the General Permit.
45. At EPA's March 20, 2008 inspection of the Facility, Respondent's SWPPP did not comply with the General Permit as follows:
 - a. the SWPPP site map was incomplete in that it did not include: (1) all areas of industrial activity, such as an adjacent four-acre parcel used by Respondent to store soil and construction materials, (2) the locations of the stormwater collection and conveyance system, including points of discharge and storm drains, or (3) the locations where materials are exposed to precipitation (General Permit, Section A(4), pp. 12-14);
 - b. the SWPPP failed to identify and describe all potential pollutant sources, including ready-mix concrete manufacturing and construction materials and soil storage (General Permit, Section A(6), pp. 14-15);
 - c. the SWPPP failed to identify and describe adequate BMPs to be implemented to control each potential pollutant and its source (General Permit, Section A(8), pg. 17);
 - d. the SWPPP failed to include a written monitoring program (General Permit, Section B, pg. 24); and

- e. the SWPPP was not signed by Respondent's duly authorized representative.
46. In a letter of August 6, 2008, Respondent informed EPA that it had addressed deficiencies that EPA had identified in its SWPPP. In response to EPA's Order of January 8, 2009, Respondent submitted a notice of completion of additional measures on January 23, 2009. Respondent submitted its final corrections to the SWPPP and the written monitoring program on April 6, 2009.
47. Upon information and belief, EPA alleges that Respondent violated the General Permit, Order Sections A(4) (pp. 12-14), and A(8) (pp. 17-21), by failing to develop an adequate SWPPP for the Facility.
48. Respondent's failure to develop an adequate SWPPP from at least September 30, 2005 to at least April 6, 2009 constitutes at least 1,284 days of violation of the General Permit. Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Failure to Implement BMPs

49. The General Permit (Effluent Limitation B.3, pg. 4; Order Section A(8), pp. 17-21) requires facility operators to implement a SWPPP which includes BMPs that achieve BAT/BCT, to minimize the discharge of pollutants in stormwater.
50. On March 19, 2008, EPA observed that Respondent had failed to implement BMPs adequate to minimize the discharge of pollutants from the Facility:
- a. at the acid wash area in the concrete manufacturing area to prevent track-out;
 - b. to contain wash water from the concrete manufacturing area and prevent it from comingling with stormwater discharges;
 - c. to prevent sediment from leaving the soil stockpiles and entering storm drain inlets;
 - d. to prevent pollutants from leaving the materials recycling area from entering storm drain inlets; and
 - e. to protect all storm drain inlets from discharges of pollutants.
51. Samples of stormwater discharge collected on October 13, 2009, December 12, 2009 and April 2, 2010, exceeded EPA's parameter benchmarks values for specific conductance, TOC and TSS, indicating that Respondent's BMPs had not achieved BAT/BCT for the Facility.
52. Upon information and belief, EPA alleges that Respondent violated the General Permit, Effluent Limitation B.3 (pg. 4), and Order Section A(8) (pp. 17-21), by failing to implement adequate BMPs at the Facility from at least September 30, 2005, to at least May 31, 2010.
53. Respondent's failure to implement all necessary BMPs from at least September 30, 2005, to at least May 31, 2010, constitutes at least 1,705 days of violation of the General Permit.

Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Failure to Sample

54. The General Permit requires facility operators to collect and analyze stormwater samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event of the wet season. (General Permit, Order Section B(5)(a), pp. 26-27) Sample collection is only required of stormwater discharges that occur during scheduled facility operating hours and that are preceded by at least three working days without stormwater discharge. The wet season is the eight month period beginning October 1 of one year and ending May 31 of the next year.
55. Data from the Stockton Metro Airport Weather Monitoring Station indicate there were at least two storm events in which rainfall exceeded 0.1 inches during each of the wet seasons 2005-06, 2006-07, 2007-08, 2008-09, and 2009-10, which occurred during scheduled Facility operating hours and were preceded by at least three working days without stormwater discharge.
56. Upon information and belief, Respondent did not collect and analyze stormwater samples for the wet seasons of 2005-06, 2006-07 and 2007-08. Upon information and belief, Respondent collected stormwater samples for the wet seasons of 2008-09 and 2009-10, but failed to have those samples analyzed for six pollutant parameters required for facilities engaged in scrap material recycling (SIC Code 5093): iron, lead, aluminum, copper, zinc, and COD.
57. Respondent's failure to collect and analyze stormwater samples during the 2005-06, 2006-07 and 2007-08 wet seasons, and failure to completely analyze stormwater samples for the wet seasons of 2008-09 and 2009-10, constitutes no fewer than ten days of violation of the General Permit (General Permit, Order Section B(5), pp. 26-27). Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

NOTICE OF PROPOSED ORDER ASSESSING PENALTIES

58. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the administrative assessment of civil penalties may not exceed \$16,000 per day for each day during which the violation continues, up to a maximum penalty of \$177,500. *See also* 73 Fed. Reg. 75340 (December 11, 2008) (2008 Penalty Inflation Rule).
59. The proposed penalty is based upon the facts stated in this Complaint, the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violation, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require.
60. The nature, circumstances, extent, and gravity of the violations described above are significant. Respondent did not comply with the terms of its permit or maintain adequate

stormwater controls at the Facility from at least September 30, 2005 to May 31, 2010. The absence of adequate stormwater controls resulted in discharges of pollutants in stormwater to waters of the United States above acceptable levels. Stormwater discharges from scrap material recycling and processing facilities and ready-mix concrete operations (SIC Codes 5093 and 3273) are known to contain the following pollutants: TSS, pH, TOC, specific conductance, iron, lead, aluminum, copper, zinc, and organic pollutants. EPA observed activities, materials and stormwater pollutant sources at the Facility that would be expected to generate the types of pollutants typically associated with a facility operating under SIC Codes 5093 and 3273. Limited sampling of Respondent's discharges found that the discharges exceeded EPA's benchmark values for three of the four pollutants that were analyzed. The Stockton Ship Channel is listed as an impaired water by the State of California pursuant to Section 303(d) of the Act for various pollutants, including unknown toxicity. Respondent's discharge of pollutants in stormwater risks contributing to the Stockton Ship Channel's impairment for unknown toxicity, and a substantial risk of further contaminating the Stockton Ship Channel and increasing the risk of harm to aquatic species and other wildlife.

61. By avoiding or delaying the costs necessary to comply with the Act, Respondent has realized an economic benefit as a result of the violations alleged above.
62. Based on the foregoing Findings of Violations, and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a civil administrative penalty against Respondent in an amount not to exceed the statutory maximum penalty allowed under 33 U.S.C. § 1319(g)(2)(B), as amended by the Civil Monetary Penalty Inflation Act, and as reflected in 40 CFR § 19.4.
63. EPA has consulted with the State of California regarding this Complaint and EPA's intention to seek civil administrative penalties against Respondent.
64. Neither assessment nor payment of a civil administrative penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the Act, and with any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

65. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. The answer shall be filed, in accordance with 40 C.F.R. § 22.5(b)(2) and 22.15 with the Regional Hearing Clerk at the address below:

Regional Hearing Clerk
U.S. EPA Region 9 (ORC-1)
75 Hawthorne Street
San Francisco, California 94105

66. In accordance with Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), Respondent may request, within thirty (30) days of receipt of this Complaint, a hearing to contest any material fact contained in the Complaint or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted 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. Part 22, a copy of which is enclosed herein.
67. If Respondent requests a hearing, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), and 40 C.F.R. § 22.45 to be heard and to present evidence on the appropriateness of the penalty assessment.
68. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should also be sent to:

Brett Moffatt
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, California 94105

OPPORTUNITY FOR INFORMAL SETTLEMENT

69. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations, and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.
70. Any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent stipulated.
71. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.

72. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Brett Moffatt, Assistant Regional Counsel, at (415) 972-3946 or at the following address:

Brett Moffatt
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, California 94105

PUBLIC NOTICE

73. Section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), require EPA to provide public notice of and a reasonable opportunity for comment before finalizing an administrative civil penalty action.

EFFECTIVE DATE

74. This proceeding is initiated by the filing of this Complaint with the Regional Hearing Clerk. For calculation of time frames provided herein, the “Effective Date” of this Complaint is the date of service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

Alexis Strauss, Director
Water Division
U.S Environmental Protection Agency, Region IX

Date