

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

Pacific Harbor Line, Inc.
340 W. Water Street
Wilmington, CA 90744

) Docket No. CWA 309(a)-08-004
)
)

) **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 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)(14)(viii) 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. Operation of Railroad Switching and Terminal Establishments (SIC) 4013, falls under Major Group 40 and is an industrial activity subject to the discharge and permitting requirements pursuant to 40 CFR § 122.26(b)(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 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 the location of storage tanks, storage areas, shipping and receiving areas, material handling and process areas, particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity that are potential pollution sources. (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, 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. Pacific Harbor Line, Inc., (Respondent) is a subsidiary of Anacostia & Pacific Company and a privately owned corporation incorporated in the State of California and licensed to do business in California and is thus a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5).
14. Respondent operates a facility within the Port's boundaries, located at 340 W. Water Street in Wilmington, CA. (Facility). Respondent has operated this facility since at least November 1, 2002. The Facility provides rail transportation, maintenance and dispatching services to the Ports of Long Beach and Los Angeles, activities categorized under SIC 4013.
15. 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.
16. 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 there were 90 days with more than 0.1 inches of rainfall at the Facility from November 1, 2002 through April 30, 2007.

17. The railroad maintenance facility maintains rail engines and stores railroad maintenance materials out-of-doors. Most engine maintenance takes place in a covered shed with all discharges from this area covered under an individual NPDES permit. Fueling and material storage takes place in areas not covered under the permit. During EPA's May 17th, 2007 inspection, inspectors found creosote treated railroad ties, lubricants, battery storage and fueling in areas that do not drain to the NPDES permit area. The facility is unpaved and storm water runoff discharges through storm drains located at the western edge of the Facility to Los Angeles Harbor (Harbor). The Facility's storm drains are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
18. 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).
19. 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.
20. On May 17, 2007, a representative of EPA inspected the Facility to evaluate compliance with the General Permit. The inspection report is attached and incorporated by reference, and contains evidence that Respondent has never submitted an NOI to the State Board or otherwise sought or received NPDES permit coverage for the Facility.
21. 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:

22. Immediately upon receipt of this Order, if it has not already done so, Respondent shall submit an application to the State of California for an NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities.

Immediately upon receipt of NPDES permit coverage, Respondent shall send a written notice of receipt of coverage to EPA.

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 an NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities. Instructions and necessary forms may be viewed and obtained at www.swrcb.ca.gov/stormwtr/industrial.html. Immediately upon receipt of NPDES permit coverage, Respondent shall send a written notice of receipt of coverage to EPA.
24. Within 30 days of receipt of this Order, Respondent shall complete interim control measures (Interim Measures) for all of the Facility's areas of industrial activity, including containment or cover of creosote-covered materials, chemicals and batteries exposed to storm water stored outside of the NPDES permitted area.
25. 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 measures taken, the date of completion for each measure, the person(s) responsible for overseeing each measure, and copies of documents associated with the completion of the measures, such as contracts, permits, manifests, and photographs.
26. In performing the Interim Measures, care shall be taken to ensure they do not cause or contribute to any runoff to waters of the United States, the municipal storm drains, or the municipal sewer systems. Care shall also be taken to ensure compliance with all applicable federal, state, and local waste storage and disposal requirements.
27. Within 30 days of receipt of NPDES permit coverage, Respondent shall submit to EPA the SWPPP and the Storm Water Monitoring Program Plan, as required by Order 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 outdoors storage area, as necessary to prevent discharges of pollutants through the storm drains;
 - b. Best Management Practices to contain spills; and
 - c. Controls to contain fuel and non-storm water discharges in the railroad maintenance and fueling areas.
28. EPA and/or the Regional Board may require Respondent to make modifications to the SWPPP and the monitoring program. Unless otherwise specified by EPA or the Regional Board, Respondent shall, within 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.

29. Within 45 days of receipt of this Order, Respondent shall submit to EPA:
 - a. A description of the Facility's history, including its length of operation and the identity of its owner(s) and operator(s) since it began operation, and all supporting documents;
 - b. All documents, including internal communications, consultant reports, and communications with any federal, state or local regulatory agencies, relating to any and all discharges or spills by the Facility since May 17, 2002;
 - c. All documents, (including internal communications, design and construction documents, location maps, operating instructions, cleaning practices, contracts, invoices for repair, cleaning and disposal, drawings, correspondence, maintenance records, and consultant reports) relating to any and all drains, sumps, and surface water collection systems located at the Facility;
 - d. All documents, including internal communications, consultant reports; communications with any regulatory agencies, concerning the General Permit; and
 - e. All documentation of off-site transfers of wastewater from the Facility's oily water catch basin since January 1, 2005.

30. Within 45 days of receipt of any NPDES storm water permit coverage for the Facility, Respondent shall submit:
 - a. Detailed costs for developing the 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.

31. 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.”

32. 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: Rick Sakow, Enforcement Officer
All telephone inquiries should be made to Rick Sakow at (415) 972-3495.

33. 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

34. This Order shall be binding upon Respondent and Respondent’s officers, directors, agents, employees, heirs, successors, and assigns.
35. 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.
36. 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.
37. 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).

38. 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.
39. 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.
40. This Order shall become effective upon the date of receipt by the Respondent.

_____/s/_____
Alexis Strauss
Director, Water Division

____11/09/07_____
Date