

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2017-0002
)	
Western States Packaging, Inc.)	
Pacoima, California	)	COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER
)	
Respondent.	)	<i>Class I Administrative Penalty Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
)	
)	
)	
)	

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class I civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(A), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 9, who in turn has delegated this authority to the Assistant Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Western States Packaging, Inc.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes EPA and EPA-authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for storm water discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(xi) defines storm water discharges associated with industrial activity to include plastic product manufacturing classified under SIC Major Group 30: Rubber and Miscellaneous Plastic Products.
8. Pursuant to CWA Section 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
9. The State of California has an EPA-authorized NPDES program and issues permits, including industrial storm water permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, SWRCB adopted General Permit No. CAS000001 for *Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015, and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No 2014-0057-DWQ, which became effective on July 1, 2015 (hereinafter, “General Permit”).
10. Pursuant to CWA Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19.4, EPA may assess a Class I civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$37,500 in total, against a person for CWA Section § 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, EPA may assess a penalty up to \$20,965 per day of violation, not to exceed \$52,414 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

11. Respondent is a California corporation and therefore, a person within the meaning of CWA § Section 502(5), 33 U.S.C. § 1362(5). Respondent operates a facility that manufactures food-grade plastic bags using blown film extrusion process located at 13276 Paxton Street, Pacoima, California, hereinafter “Facility.”
12. Respondent has been engaged in manufacturing plastic products from plastic resins at the Facility since at least May 10, 2002, a date best known to Respondent. Respondent’s

operations at the Facility fall within activities classified under SIC Code 3081 (Unsupported Plastics Film and Sheet), and is therefore an “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(xi).

13. Storm water runoff from the Facility discharges into a storm drain inlet located at the intersection of Louvre Street and Bradley Avenue, connected to the Los Angeles County Municipal Separate Storm Sewer System (MS4). Such inlets, pipes and the Los Angeles County MS4 are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
14. Storm water runoff from the Facility is a “storm water discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(xi).
15. EPA alleges that storm water discharges from the Facility contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
16. Discharges from the Facility enter the Los Angeles County MS4, which discharges into the Tujunga Wash, which flows to the Los Angeles River, which flows to the Pacific Ocean. The Tujunga Wash, the Los Angeles River, and the Pacific Ocean are “waters of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7) and implementing regulations.
17. EPA alleges that Respondent’s discharge of pollutants in storm water into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
18. On March 28, 2007, Respondent filed a Notice of Intent (NOI) for permit coverage under the previous California Storm Water Industrial General Permit (Order No. 97-03-DWG). On December 11, 2012, the Los Angeles Regional Water Quality Control Board inspected the Facility and indicated that Respondent did not need permit coverage and could file a Notice of Termination. Respondent, however maintained its NOI status until August 4, 2015, when it applied for No Exposure Certification (NEC). In order to be eligible for NEC, a facility must certify, among other things, that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation: materials or residuals on the ground or in storm water inlets form spills/leaks; materials or products during loading/unloading or transporting activities; and waste material (except waste in covered, non-leaking containers, e.g., dumpsters). On December 10, 2015, representatives of EPA Region 9 inspected the Facility and observed spilled plastic pellets on impervious surface throughout the Facility without proper control measures in place.
19. On September 26, 2016, Respondent applied to the State Water Board for NOI coverage under the General Permit for the Facility. On October 6, 2016, the State Water Board granted Respondent coverage under the General Permit and assigned the Waste Discharge Identification Number 4 19I026938 for the Facility. Prior to September 26, 2016, stormwater discharges from Respondent’s Facility were not authorized by the General Permit or an individual NPDES permit.

20. Between July 1, 2015, the date the more stringent requirements for plastics became effective, and September 26, 2016, the date Respondent applied for NOI coverage, at least six (6) days with rainfall in excess of 0.5 inches were recorded at the Burbank Municipal Airport. EPA alleges that each of these six (6) rainfall events resulted in a discharge of stormwater associated with industrial activity from the Facility.

IV. ALLEGED VIOLATIONS

21. EPA alleges that between July 1, 2015 and September 26, 2016, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a) on at least six (6) days by discharging pollutants from a point source into waters of the United States without NPDES permit authorization.

V. ADMINISTRATIVE PENALTY

22. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of \$25,000 within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

23. Respondent shall make penalty payment by one of the options listed below:

a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706

Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727
Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

24. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
25. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Daniel Haskell
Enforcement Division
U.S. Environmental Protection Agency, Region 9
600 Wilshire Boulevard, Suite 1460
Los Angeles, CA 90017

26. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
27. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty within thirty (30) calendar days of the Effective Date of this CA/FO, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

28. This CA/FO shall apply to and be binding on Respondent, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

29. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
 - b. neither admits nor denies specific factual allegations contained in the complaint;
 - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
 - d. waives any right to contest the allegations set forth in this CA/FO; and
 - e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

30. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

31. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

32. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

33. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

34. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.
35. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

//s// Ken Greenberg (acting for)
Elizabeth Berg
Acting Assistant Director
Enforcement Division

06/21/17
Date

For Respondent Western States Packaging, Inc.

_____/s/_____
Mark Pickrell
CEO

_____/06/21/17_____
Date

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2017-0002
)	
Western States Packaging, Inc.	)	CONSENT AGREEMENT
Pacoima, California	)	AND FINAL ORDER
)	
Respondent.	)	<i>Class I Administrative Penalty Proceeding</i>
	)	<i>under Section 309(g) of the Clean Water Act,</i>
	)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
	)	<i>22.13(b) and 22.18</i>
)	

The United States Environmental Protection Agency Region 9 (EPA) and Western States Packaging, Inc.(Respondent), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the proposed Consent Agreement and Final Order,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. CWA-09-2017-0002) be entered; and
2. Respondent pay an administrative civil penalty of \$25,000 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order is effective on the date that it is filed with the Regional Hearing Clerk. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

Regional Judicial Officer, Region 9
U.S. Environmental Protection Agency

Date: _____