



REGION 4

ATLANTA, GA 30303

ELECTRONIC MAIL
CONFIRMATION OF RECEIPT EMAIL REQUESTED

Joseph Martines
Plant Manager
48Forty Solutions
312 Upchurch Lane
Walterboro, South Carolina 29488
Joseph.Martines@48forty.com

Re: Notice of Violation and Opportunity to Show Cause Pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. section 1319, and Information Request Pursuant to Section 308 of the CWA, 33 U.S.C. section 1318, 48Forty Solutions at Walterboro, South Carolina, 29488, Docket No. CWA-309-2024-12

Dear Joseph Martines:

On August 8, 2023, the U.S. Environmental Protection Agency, Region 4, and the South Carolina Department of Environmental Services (SCDES), formally the South Carolina Department of Health and Environmental Control, conducted a Stormwater Compliance Evaluation Inspection (SW CEI) at the 48Forty Solutions Walterboro pallet facility (Facility), owned by 48Forty Solutions, LLC (Respondent), located at 312 Upchurch Lane, Walterboro, South Carolina, 29488. The purpose of the SW CEI was to evaluate Respondent's compliance with Sections 301 and 402 of the Clean Water Act (CWA), 33 U.S.C. sections 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. section 122.26; and the South Carolina National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges associated with industrial activity, Permit No. SCR000000 (Permit).

The August 2023 SW CEI and subsequent investigative efforts have revealed that the Facility has failed to comply with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. sections 1311 and 1342(p), its implementing regulations at 40 C.F.R. section 122.26, and the Permit. Specifically, the EPA hereby notifies Respondent, pursuant to Section 309(a) of the CWA, 33 U.S.C. section 1319(a), of the following alleged violations associated with the Permit:

1. Pursuant to Part 5.4 of the Permit, permittees must maintain inspection, monitoring, and certification documents required by the Permit and make them readily available to the EPA and/or SCDES upon request.

These documents include, but are not limited to, the following: latest Notice of Intent (NOI); acknowledgement of permit coverage, records of significant spills, leaks, or releases, records of maintenance and repair of control measures; records of facility inspections and periodic reporting; and records of benchmark exceedances and response actions.

During the SW CEI, the EPA requested records pertaining to Part 5.4 of the Permit. In response, the Respondent failed to provide the following documents: a copy of the most recent NOI; spill/release data; records of operation and maintenance repairs; records of inspections; benchmark monitoring records; and training records.

Therefore, Respondent is in violation of Part 5.4 of the Permit for failure to maintain proper documentation with regards to its permit for stormwater discharges associated with its industrial activity.

2. Pursuant to Part 5 of the Permit, permittees must prepare a Stormwater Pollution Prevention Plan (SWPPP) prior to submitting a NOI for permit coverage. If a SWPPP was prepared for coverage under a previous version of the permit, the Respondent must “review and update the SWPPP to implement all provisions of this permit prior to submitting a recertification NOI.” Part 3 of the Permit requires updates to the SWPPP be made when there are corrective actions taken in response to problems.

During the SW CEI, the EPA inspectors were provided a copy of a SWPPP for CHEP Recycled Pallet Solutions, LLC, the prior owner, dated May 2017. This SWPPP was prepared for the previous permit cycle and was not updated to reflect current site conditions and permit requirements.

Therefore, Respondent is in violation of Part 3 and Part 5 of the Permit due to its failure to review and update the SWPPP based on current operations and activities that occur at the Facility.

3. Pursuant to Part 5.1.5.1.a of the Permit, permittees should incorporate in its SWPPP schedules and procedures for good housekeeping and preventative maintenance measures.

During the SW CEI, the EPA’s review of the SWPPP identified a lack of schedules and procedures for good housekeeping and preventative maintenance measures and a schedule for the completion of corrective actions in response to findings.

Therefore, Respondent is in violation of Part 5.1.5.1.a of the Permit for its failure to include in its SWPPP their requirements for good housekeeping and preventative maintenance measures at the Facility.

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into navigable waters except as in compliance with, *inter alia*, a National Pollutant

Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the State of South Carolina through SCDES approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

Pursuant to Part 1.3.1 of the Permit, the facility must submit a NOI to SCDES to obtain and/or review permit coverage under the general permit for stormwater associated with industrial activity (SCR000000) no later than 90 days after the effective date of the 2022 general permit (date effective: May 26, 2022).

During the SW CEI, the EPA inspectors observed that the Respondent could neither provide proof of submission of the NOI to SCDES for coverage under the 2022 Permit nor provide documentation of receiving a Notice of Coverage.

Therefore, Respondent is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging stormwater from the Facility without proper authorization to waters of the United States.

Until compliance with the Permit and the CWA have been demonstrated to the EPA, Respondent may be subject to an enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. section 1319. This section provides for the issuance of administrative penalty and/or compliance orders and the initiation of civil and/or criminal actions.

The EPA is continuing to investigate Respondent's compliance with the CWA. Therefore, pursuant to Section 308 of the CWA, 33 U.S.C. section 1318, the EPA hereby requests that Respondent provide the information set forth in "Enclosure A" (Information Request) within 14 calendar days of your receipt of this letter. Respondent should submit its response to Jeremy Judd at Judd.Jeremy@epa.gov.

Failure to provide a full and complete response to this Information Request or to adequately justify a failure to respond within the time frame specified above may result in an EPA enforcement action pursuant to federal law, including, but not limited to Section 309 of the CWA, 33 U.S.C. section 1319, and the False Statements Statute, 18 U.S.C. section 1001.

If Respondent believes that any of the requested information constitutes confidential business information, it may assert a confidentiality claim with respect to such information, except for effluent data. Further details, including how to make a business confidentiality claim, are found in Enclosure B. All information submitted in response to this Information Request must be accompanied by the following certification, signed by a duly authorized official in accordance with 40 C.F.R. section 122.22(d):

"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, 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.”

If you would like to arrange a virtual meeting or telephone conference to show cause why the EPA should not take formal civil enforcement action against 48Forty Solutions for the alleged violation(s), including the assessment of appropriate civil penalties, please contact the EPA within seven calendar days of receipt of this letter.

Please be aware that the EPA may use information provided during the meeting or telephone conference and in response to the Information Request in any enforcement proceeding related to this matter. Notwithstanding a complete response to the Information Request or the scheduling of a show cause meeting, the EPA retains the right to bring further enforcement action under Section 309 of the CWA, 33 U.S.C. section 1319, for noncompliance with the CWA.

If you have any questions or would like to arrange a show cause meeting, please contact Jeremy Judd at (404) 562-9505, or at Judd.Jeremy@epa.gov. Please contact Andrew Teodorescu, Associate Regional Counsel at (404) 562-8309, or at Teodorescu.Andrew@epa.gov with any legal inquiries.

Sincerely,

**LARRY
LAMBERTH**

Keriema S. Newman
Director

Enforcement and Compliance Assurance Division

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LAMBERTH
Date: 2024.08.29 15:57:00
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for

cc: Dale Stoudemire, SCDES
Stoudedw@dhec.sc.gov

Mark Maynard, 48Forty Solutions
Mark.Maynard@48forty.com

ENCLOSURE A

INFORMATION REQUEST PURSUANT TO SECTION 308 OF THE CLEAN WATER ACT

Instructions

1. Identify the person(s) responding to this Information Request and certify each person's authority to respond to this Information Request on behalf of the company they represent.
2. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
3. Precede each answer with the text and the number of the Question and its subpart to which the answer corresponds.
4. All documents submitted must contain a notation indicating the Question and subpart of the Question to which they are responsive.
5. In answering each Information Request Question and subpart thereto, identify all documents and persons consulted, examined or referred to in the preparation of each response, and provide true and accurate copies of all such documents.
6. If information not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA as soon as possible.
7. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
8. Where specific information has not been memorialized in a document, but is nonetheless responsive to a Question, you must respond to the Question with a written response.
9. If information responsive to this Information Request is not in your possession, custody or control, then identify the person from whom such information may be obtained.
10. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Question or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.
11. The EPA requests that all documents provided in an electronic format be compatible with pdf.

12. The EPA requests that all spreadsheet information be in an electronic format and compatible with MS Excel.
13. If any Question relates to activities undertaken by entities other than the recipient of this Information Request, and to the extent that you have information pertaining to such activities, provide such information for each entity.

Definitions

1. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the Clean Water Act or its implementing regulations, in which case the statutory or regulatory definitions shall control.
2. Words in the masculine may be construed in the feminine if appropriate, and vice versa, and words in the singular may be construed in the plural if appropriate, and vice versa, in the context of a particular question or questions.
3. The terms “And” and “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed outside its scope.
4. The term “Identify” means, with respect to a natural person, to set forth the person’s name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position, or business.
5. The term “Identify” means, with respect to a document, to provide its customary business description; its date; its number, if any (invoice or purchase order number); the identity of the author, addressee and/or recipient; and substance of the subject matter.
6. The term “Identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
7. The term “Facility” and/or “Facilities” means the businesses operating or located at 312 Upchurch Lane, Walterboro, South Carolina, 29488.
8. The term “You” and “Your” shall mean the person identified in response to the Instructions Section, Question #1, who has the appropriate authority to respond to this Information Request.
9. The term “NPDES Permit” or “Permit” shall mean South Carolina’s Industrial Stormwater General Permit, Permit No. SCR000000, as issued final on May 26, 2022.

Questions and Requests for Information

1. Identify the names and addresses of the current owner(s) and/or operator(s) of the Site. Specify the legal name with the exact spelling of each owner and/or operator. Provide the mailing address and phone number for each owner and/or operator. For each corporate owner, specify the state of incorporation and principal place of business. If incorporated, provide the name and mailing address of the registered agent.
2. Provide the specific date(s) for the commencement of operations at this Facility for each owner and/or operator within the last five (5) years.
3. Provide a copy of the Notice of Intent (NOI) and any relevant attachments as submitted to SCDES for coverage under the 2022 Permit, as well as a copy of the acknowledgement letter received from SCDES assigning a coverage certification number (see Permit Part 5.4.b). Identify the date the NOI was submitted. If an NOI was not submitted, provide justification as to why.
4. Provide a site plan/map, which clearly communicates the site's drainage system as it currently exits. Please ensure the map shows (1) the connectivity of the drainage system, including all storm drain inlet locations and underground piping; (2) the direction of stormwater flow; (3) the location of all permitted outfalls as identified in the Facility's 2022 NOI as well as each outfall's ID number; and (4) all sampling locations. One or more maps may be submitted so long as all of the requested information is included and clearly communicated.
5. Provide copies of the following records, as described, and required by South Carolina's Permit for Stormwater Discharges Associated with Industrial Activity, covering the past three (3) years (beginning January 01, 2021, through present):
 - a. The facility's most recent, updated, and current Storm Water Pollution Prevention Plan (SWPPP). Identify the date of its last amendment.
 - b. Monitoring reports, as described by Part 7.1.i and Part 7.1.ii and Part 5.4.i in the Permit, for all monitored outfalls.
 - c. Inspection reports, as described by Part 5.4.f in the Permit, along with corrective action reports (Permit Part 3.4) for all industrial facility areas.
 - d. Records of incidents with spills, leaks, and/or other releases of pollutants, as described by Part 5.4.d of the Permit.
 - e. Documentation of all operation and maintenance repairs of control equipment, as described by Part 5.4.e of the Permit.
 - f. Documentation of all exceedances to stormwater sampling benchmarks and the responses with corrective actions, as described by Part 5.4.i of the Permit.
 - g. Documentation of employee and staff training records with regards to industrial stormwater management, pollution prevention, and good housekeeping, as described by Part 5.4.e of the Permit.

6. Provide a list of all of the facilities, owned and/or operated by the 48Forty Solutions, that manufacture pallets (SIC Code 2448). Include in this list the name of the facility, address of the facility, how long operations have been on going at the facility, and the NPDES permit number (if applicable). If the facility does not have NPDES permit coverage, provide an explanation of why permit coverage was not obtained.

ENCLOSURE B

RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS (40 C.F.R. Part 2)

Except for effluent data, you may, if you desire, assert a business confidentiality claim as to any or all of the information that the EPA is requesting from you. The EPA regulation relating to business confidentiality claims is found at 40 C.F.R. Part 2.

If you assert such a claim for the requested information, the EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, the EPA may make the information available to the public without any further notice to you.

40 C.F.R. § 2.203(b). Method and time of asserting business confidentiality claim. A business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non confidential documents should be clearly identified by the business and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.