



REGION 6
DALLAS, TX 75270

December 18, 2023

TRANSMITTED VIA E-MAIL

Mr. Diron Blackburn, President
W & P Development Corporation
18511 Beaumont Highway
Houston, Texas 77049
dblackburn@twcousa.com

RE: Administrative Order; Docket Number: CWA-06-2024-1708
San Jacinto River and Rail
TPDES Permit Number: TX0053023

Dear Mr. Blackburn:

Enclosed is an Administrative Order (AO) issued to the W & P Development Corporation, for violations of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.). Violations were identified during a review of the permit file and discharge monitoring reports submitted for the San Jacinto River and Rail Plant. The violations alleged are for failure to meet permit effluent limitations. The EPA requests that you immediately confirm receipt of this e-mail and the attached order by a response e-mail to edelbrock.judy@epa.gov

This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The first compliance deadline is within thirty days of the effective date of the AO. The Environmental Protection Agency is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program and my staff will assist you in any way possible. Please reference AO Docket Number CWA-06-2024-1708 and TPDES Permit Number TX0053023 on your response.

If you have any questions, please contact Ms. Judy Edelbrock my staff, at (214) 665-8582 or edelbrock.judy@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl T. Seager".

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Date: 2023.12.18 15:45:46
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure

ec: kristy.deaver@tceq.texas.gov
tmcguire@sjrr.us



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

Docket Number: CWA-06-2024-1708; TPDES Permit Number: TX0053023

STATUTORY AUTHORITY

The following findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), Section 309(a) of the Clean Water Act (the Act), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

FINDINGS

1. The W & P Development Corporation (Respondent) is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
2. At all times relevant to this Order (all relevant times), Respondent owned or operated the San Jacinto River and Rail Plant (facility) located at 18511 Beaumont Highway, Houston in Harris County, Texas 77049, and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.
3. At all relevant times, the facility acted as a "point source" of a "discharge" of "pollutants" with its final wastewater discharge via Outfall 001 to a 42-inch-long underground pipeline directly to the Houston Ship Channel in Segment No. 1006 of the San Jacinto River Basin, which is a "water of the United States," within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.
5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.
7. Section 402 of the Act, 33 U.S.C. § 1342, authorizes states to request approval from EPA to administer their own permit programs for discharges into navigable waters within their jurisdiction. Pursuant to this provision, the State of Texas requested approval from EPA to administer its own permit program for discharges into navigable waters within Texas, and such approval was granted by EPA on September 14, 1998. Therefore, pursuant to the State's permit program, the Texas Commission on Environmental Quality (TCEQ) issued Texas Pollutant Discharge Elimination System (TPDES) permits. Violation of a TPDES permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
8. Respondent applied for and was issued TPDES Permit No. TX0053023 (permit) under Section 402 of the Act, 33 U.S.C. § 1342, which was issued on May 3, 2019. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.
9. The permit includes "Monitoring and Reporting Requirements" that require Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility's compliance or noncompliance with the permit and applicable regulations. The permit also requires Respondent to file with TCEQ certified Discharge Monitoring Reports (DMRs) of the results of monitoring, and Noncompliance Reports when appropriate.
10. The permit contains "Effluent Limitations and Monitoring Requirements" that place certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Attachment A, which is incorporated herein by reference.
11. Certified DMRs filed by Respondent with TCEQ in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in the permit, as specified in Attachment B, which is incorporated herein by reference.
12. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311.

SECTION 309(a)(3) COMPLIANCE ORDER

Based on the foregoing Findings and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), EPA hereby orders Respondent to take the following action:

A. Take such measures as are necessary to comply with all permit conditions, including Effluent Limitations and Monitoring and Reporting Requirements, no later than thirty (30) days from the effective date of the Order.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a list of the specific actions taken to correct the BOD, COD, Enterococci, Mercury, Nickel, Titanium and TSS violations.

C. Within thirty (30) days of the effective date of this Order, Respondent shall provide written certification to EPA Region 6 that the violations cited herein have been corrected and the facility is compliant with the requirements of the permit.

D. In the event the Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within thirty (30) days of the effective date of this Order, submit a comprehensive written plan for the elimination of the cited violations within the shortest possible time. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

E. Any information or correspondence submitted by Respondent to EPA under this Order shall be submitted, via e-mail to the following:

Ms. Judy Edelbrock
edelbrock.judy@epa.gov

GENERAL PROVISIONS

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Issuance of this Section 309(a)(3) Compliance Order shall not be deemed an election by EPA to waive any administrative, judicial, civil, or criminal action to seek penalties, fines, or other relief under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Section 309(a)(3) Compliance Order or the Act may result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

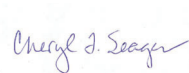
For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraph 13 is restitution, remediation, or required to come into compliance with the law.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remain in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by Respondent.

December 18, 2023

Date



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SEAGER
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Attachment A
W & P Development Corporation
NPDES Permit ID: TX0053023
Phase II

Effluent Characteristic	Discharge Limitations	
Outfall: 001	Daily Avg. lbs/day (mg/L)	Daily Max. lbs/day (mg/L)
Biochemical Oxygen Demand, (BOD)	1,769 (53.0)	5,440 (163)
Chemical Oxygen Demand, (COD)	N/A	(200)
Enterococci	35 CFU/100 ML	104 CFU/100ml
Mercury, Total	0.0082 (0.000246)	0.0214 (0.000641)
Nickel, Total	4.37 (0.131)	9.21 (0.276)
Titanium, Total	0.204 (0.00612)	0.530 (0.0159)
Total Suspended Solids, (TSS)	377 (11.3)	988 (29.6)

Attachment B--W&P Development Corporation

TX0053023

Violations

Monitoring Period End Date	Outfall	Parameter	Monitoring	Unit	Limit Value	DMR Value
01/31/2021	001	BOD, 5-day, 20 deg. C	DAILY AV	mg/L	53.	128.855
01/31/2021	001	BOD, 5-day, 20 deg. C	DAILY MX	mg/L	163.	493.
01/31/2021	001	Enterococci	DAILY MX	CFU/100mL	104.	236.
01/31/2021	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	1284.
01/31/2021	001	Solids, total suspended	DAILY AV	lb/d	377.	1338.8456
01/31/2021	001	Solids, total suspended	DAILY AV	mg/L	11.3	149.85
01/31/2021	001	Solids, total suspended	DAILY MX	lb/d	988.	5164.128
01/31/2021	001	Solids, total suspended	DAILY MX	mg/L	29.6	576.
04/30/2021	001	Enterococci	DAILY AV	CFU/100mL	35.	67.8823
04/30/2021	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	218.
10/31/2021	001	Enterococci	DAILY AV	CFU/100mL	35.	192.
10/31/2021	001	Enterococci	DAILY MX	CFU/100mL	104.	220.
08/31/2022	001	Mercury, total [as Hg]	DAILY AV	lb/d	.0082	.0173
08/31/2022	001	Mercury, total [as Hg]	DAILY AV	mg/L	.000246	.0019
08/31/2022	001	Mercury, total [as Hg]	DAILY MX	lb/d	.0214	.0454
08/31/2022	001	Mercury, total [as Hg]	DAILY MX	mg/L	.000641	.005
08/31/2022	001	Solids, total suspended	DAILY AV	mg/L	11.3	20.9
08/31/2022	001	Solids, total suspended	DAILY MX	mg/L	29.6	46.65
12/31/2022	001	Solids, total suspended	DAILY AV	mg/L	11.3	11.3833
04/30/2023	001	Solids, total suspended	DAILY AV	mg/L	11.3	12.6333
05/31/2023	001	Nickel, total [as Ni]	DAILY AV	mg/L	.131	.1613

05/31/2023	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	309.
05/31/2023	001	Solids, total suspended	DAILY AV	mg/L	11.3	24.8333
05/31/2023	001	Solids, total suspended	DAILY MX	mg/L	29.6	53.
05/31/2023	001	Titanium, total [as Ti]	DAILY AV	mg/L	.00612	.02033
05/31/2023	001	Titanium, total [as Ti]	DAILY MX	mg/L	.0159	.0291
06/30/2023	001	Nickel, total [as Ni]	DAILY AV	mg/L	.131	.1639
06/30/2023	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	272.
06/30/2023	001	Solids, total suspended	DAILY AV	mg/L	11.3	14.2875
06/30/2023	001	Titanium, total [as Ti]	DAILY AV	mg/L	.00612	.02045
06/30/2023	001	Titanium, total [as Ti]	DAILY MX	mg/L	.0159	.0286
07/31/2023	001	Nickel, total [as Ni]	DAILY AV	mg/L	.131	.246
07/31/2023	001	Nickel, total [as Ni]	DAILY MX	mg/L	.276	.28
07/31/2023	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	629.
07/31/2023	001	Solids, total suspended	DAILY AV	mg/L	11.3	20.5778
07/31/2023	001	Solids, total suspended	DAILY MX	mg/L	29.6	69.4
07/31/2023	001	Titanium, total [as Ti]	DAILY AV	mg/L	.00612	.0162
07/31/2023	001	Titanium, total [as Ti]	DAILY MX	mg/L	.0159	.0198
08/31/2023	001	BOD, 5-day, 20 deg. C	DAILY AV	mg/L	53.	88.44
08/31/2023	001	BOD, 5-day, 20 deg. C	DAILY MX	mg/L	163.	216.
08/31/2023	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	544.
08/31/2023	001	Solids, total suspended	DAILY AV	mg/L	11.3	17.62
08/31/2023	001	Titanium, total [as Ti]	DAILY AV	mg/L	.00612	.02022
08/31/2023	001	Titanium, total [as Ti]	DAILY MX	mg/L	.0159	.0378
09/30/2023	001	BOD, 5-day, 20 deg. C	DAILY AV	mg/L	53.	61.6767
09/30/2023	001	BOD, 5-day, 20 deg. C	DAILY MX	mg/L	163.	346.
09/30/2023	001	Titanium, total [as Ti]	DAILY AV	mg/L	.00612	.02577
09/30/2023	001	Titanium, total [as Ti]	DAILY MX	mg/L	.0159	.0506
10/31/2023	001	Oxygen demand, chem. [high level] [COD]	DAILY MX	mg/L	200.	329.
10/31/2023	001	Solids, total suspended	DAILY AV	mg/L	11.3	22.88
10/31/2023	001	Solids, total suspended	DAILY MX	mg/L	29.6	58.