

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
L'Anse Warden Electric Company))	ORDER FOR COMPLIANCE
Fuel Aggregation Facility)	UNDER SECTIONS 308 AND 309(a)
17696 U.S. Highway 41)	OF THE CLEAN WATER ACT,
L'Anse Michigan 49946)	AS AMENDED
)	
Respondent)	DOCKET NO: V-W-13-AO-7
)	

The U.S. Environmental Protection Agency issues this Order (Order) to L'Anse Warden Electric Company (Respondent) under the authority of Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a). The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA Region 5, who has redelegated this authority to the Director of the Water Division, EPA, Region 5.

I. INTRODUCTION

1. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that whenever, on the basis of any available information, the Administrator finds that any person is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or is in violation of any permit condition or limitation implementing Section 301(a) of the CWA in a permit issued by a State under an approved permit program under Section 402 of the CWA, 33 U.S.C. § 1342, she shall issue an order requiring that person to comply with the provisions of the CWA and the requirements of the permit.
2. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator to require the owner or operator of any point source to establish and maintain records, make reports, install, use and maintain monitoring equipment, sample effluent and provide any other information she may reasonably require to carry out the objectives of the CWA.
3. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) by which the Administrator may issue permits for the discharge of pollutants to the waters of the United States, subject to certain conditions.
4. EPA has approved the State of Michigan program to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C § 1342(b). The Michigan Department of Environmental Quality (MDEQ) is the NPDES permitting authority for the State of Michigan (State). EPA retains the authority to enforce the CWA in Michigan.

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States by any person except in compliance with, *inter alia*, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

II. DEFINITIONS

6. All terms used but not otherwise defined in this Order shall have the meaning provided in the CWA or EPA regulations promulgated under the CWA. Whenever the terms set forth below are used in this Order, the following definitions shall apply:
7. “Discharge” or “discharge of a pollutant” means, among other things, any addition of any pollutant to navigable waters from any point source. *See* Sections 502(12) and 502(16) of the CWA, 33 U.S.C. §§ 1362(12) and 1362(16); 40 C.F.R. § 122.2.
8. “Navigable waters” means the waters of the United States. *See* Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
9. “Person” means, among other things, an individual, association, partnership, or corporation. *See* Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
10. “Point source” means, among other things, any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” *See* Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
11. “Pollutant” means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” *See* Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
12. “Waters of the United States” means, in accordance with 40 C.F.R. § 122.2, among other things:
 - a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters, including interstate wetlands;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:

- (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) which are or could be used for industrial purposes by industries in interstate commerce;
- d. all impoundments of waters otherwise defined as waters of the United States under this definition;
 - e. tributaries of waters identified in Subparagraphs (a) through (d) of this definition; and
 - f. wetlands adjacent to the waters identified above.

III. FINDINGS

- 13. Respondent is a Limited Liability Company that operates a biomass Fuel Aggregation Facility (Facility) at 17696 U.S. Highway 41, L'Anse, Michigan.
- 14. On April 26 through April 27, 2012, EPA conducted an inspection of the Facility (Inspection).
- 15. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Michigan Act 451, Public Acts of 1994, as amended (the "Michigan Act"), Parts 31 and 41, and Michigan Executive Orders 1991-31, 1995-4 and 1995-18, MDEQ issued Respondent a Certificate of Coverage, number MIS310650, under NPDES General Permit MIS310000 (the "Permit") on March 22, 2012.
- 16. Coverage under General Permit MIS310000 takes effect on the Certificate of Coverage's date of issuance, March 22, 2012.
- 17. The terms and conditions of the Permit establish Storm Water Pollution Prevention Plan (SWPPP) requirements specifically set forth in Section B(1), "Schedules and Certifications for New Storm Water General Permit Applicants," and Section C, "SWPPP."
- 18. Respondent's SWPPP does not include the following elements required by the Permit:
 - a. Part I, Section C(1)(a), of the Permit requires that the SWPPP contain a site map to identify potential sources of significant material that can pollute storm water. The Facility SWPPP site map is not representative of the site. All required

features are not included on the site map, and other features identified on the site map are not present on site.

- b. Creosote and Pentachlorophenol are not identified as significant materials that may pollute storm water, as required in Part I, Section C(1)(b), of the Permit.
- c. The SWPPP does not include a written description of the reasonable potential for runoff from all significant particulate generating processes, including wood fines or wood dust emitted from the conveyor system, as required in Part I, Section C(1)(b)(2)(d), of the Permit.
- d. Section IX(3) of the SWPPP does not include a schedule for routine preventative maintenance, as required in Part I, Section C(2)(a), of the Permit.
- e. The SWPPP and the related Quarterly Comprehensive Site Inspection Forms only address water quality and do not require visual inspection of equipment, plant areas, and structural pollution prevention and treatment controls, as required by Part I, Section C(2)(b) of the Permit.
- f. The SWPPP does not include a schedule for a comprehensive site inspection, on at least a quarterly basis, as required in Part I, Section C(2)(b) of the Permit.
- g. Section IX(2) of the SWPPP does not describe good housekeeping procedures for all sources of significant materials, which is necessary to maintain a clean, orderly facility, as required in Part I, Section C(2)(c), of the Permit.
- h. The construction area around the processed railroad tie storage building is not identified in the SWPPP as having high potential for erosion, as is required in Part I, Section C(2)(e), of the Permit.
- i. The Storm Water Source Best Management Practices (BMPs) in Table 3 of the SWPPP has not been updated or amended as a result of the March 6, 2012 annual SWPPP review, which should have identified changes to activity Respondent is taking to respond to and prevent spills at the Facility, as required in Part I, Section C(4)(a), of the Permit.

19. Respondent is not implementing the following elements of its SWPPP that are required by its Permit:

- a. The monthly preventative maintenance records show that testing and cleaning required in Section IX(3) of the SWPPP is not occurring on a routine basis.
- b. The good housekeeping practice of storing scrap metals in proper closed containers, as described in Section IX(A)(2) of the SWPPP, is not being implemented on site.

- c. During the Inspection there was no evidence of reestablishing a vegetative buffer on the north side of the railroad tracks, as described in Section IX(A)(1) of the SWPPP.
 - d. Section IX(6) of the SWPPP states that employee training attendance sheets are to be included with the SWPPP, but no records of employee training attendance sheets were provided during the Inspection.
20. By failing to include and implement all required elements of the SWPPP, Respondent is in noncompliance with the terms and conditions of its Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.
 21. By discharging pollutants from the Facility without complying with the terms and conditions of its Permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. COMPLIANCE REQUIREMENTS

BASED ON THE FOREGOING FINDINGS and the authority vested in the undersigned Director, Water Division, Region 5, IT IS HEREBY ORDERED in accordance with Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), that Respondent complete the actions detailed in the following paragraphs.

22. Within 10 calendar days of the effective date of this Order, the Respondent shall submit a written certification that it intends to comply with this Order.
23. Within 30 days of the effective date of this Order, Respondent shall submit a revised SWPPP for EPA approval that includes all requirements in accordance with NPDES General Permit MIS310000, including those specifically identified in the Findings above.
24. Within 60 calendar days of EPA approval of the SWPPP, Respondent shall submit a detailed Plan of Action, for EPA approval, that describes the actions taken, or to be taken to implement the revised SWPPP. The Plan of Action shall include all capital costs, operation and maintenance costs, and engineering costs associated with the actions. The Plan of Action shall also include a schedule for completing the actions identified. In no event shall the schedule for completing actions extend beyond 90 days after EPA approval of the SWPPP.
25. The schedule for completing actions will begin on the date of EPA approval of the Plan of Action.
26. Upon approval of the Plan of Action, the schedule for completing actions shall become an enforceable compliance schedule through this Order.

27. Upon approval of the Plan of Action, Respondent shall submit a monthly report to EPA stating the status of each project in the Plan of Action. This report shall be submitted by the 15th day of the following month. Respondent shall submit monthly reports until notified by EPA.

V. SUBMITTALS

28. Any documents or notifications required by this Order to be submitted to EPA shall be mailed to the following address:

Water Enforcement Compliance Assurance Branch (WC-15J)
U.S EPA Region 5
Attn: Jeremy Deyoe
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

29. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certification:

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 statements and information, including the possibility of fines and imprisonment for knowing violations.

30. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.
31. You may not withhold information because you claim it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA when that person submits the information. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in NPDES permit applications is not entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business

confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B.

32. If you do not assert a claim of business confidentiality when you submit the information, EPA may make the information available to the public without further notice.
33. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

VI. EFFECTIVE DATE AND OPPORTUNITY TO CONFER

34. Respondent has the opportunity to confer with and submit information to EPA concerning the validity of this Order.
35. Such information may include evidence (*i.e.*, documentation), arguments and comments regarding the legal and factual determinations on which the Order is based, its applicability to Respondent, the appropriateness of its terms or any other relevant and material issue.
36. If Respondent chooses to confer orally with EPA, it shall request an informal conference within 10 calendar days of its receipt of this Order. To request a conference, contact Jeremy Deyoe at (312) 353-8512, or Respondent's attorney may contact Jacqueline Clark, Associate Regional Counsel, at (312) 353-4191.
 - a. Any conference held pursuant to this Paragraph shall take place within 10 calendar days from the date of the request, unless the time period is extended by agreement of the parties. Respondent may appear in person, participate by telephone or be represented by an attorney or other representative.
 - b. Respondent is responsible for reducing all oral information it presents at the conference, including comments and arguments, to writing and submitting that document to EPA within five calendar days following the conference, unless the time period is extended by agreement of the parties.
 - c. Such a conference is not a formal evidentiary hearing and does not constitute a proceeding to challenge this Order. EPA will not make a formal transcript of the conference.
37. Regardless of whether Respondent requests a conference, Respondent may submit written information to EPA, as provided in Paragraph 35, above, within 10 calendar days of the date of signature of this Order by the Water Division Director, unless the time period is extended by agreement of the parties. Respondent shall submit any written information according to the instructions in Section V of this Order.

38. EPA shall deem a failure to either request a conference or submit written information within 10 calendar days of the date of signature of this Order by the Water Division Director as a waiver of the opportunity to confer.
39. If Respondent does not request a conference or submit written information pursuant to this Section, this Order shall become final and effective 15 calendar days after its date of signature by the Water Division Director.
40. EPA shall consider all relevant and material written information submitted by Respondent pursuant to this Section and determine that: (1) this Order should become final as originally issued; (2) this Order should be modified; or (3) this Order should be withdrawn.
41. If EPA determines that this Order should become final as originally issued or should be modified, then EPA shall address the material and relevant information submitted by Respondent in a responsiveness summary.
 - a. All written information submitted by Respondent and EPA's responsiveness summary shall be included in the administrative record supporting this Order.
 - b. The administrative record shall be available for public review under the Freedom of Information Act.
42. If EPA determines that this Order should become final as originally issued, EPA will notify Respondent of that decision in writing and shall provide Respondent with a copy of the responsiveness summary.
43. If EPA determines that this Order should be modified, EPA will modify the Order and issue a modified order to Respondent and shall provide Respondent with a copy of the responsiveness summary.
44. If EPA determines that this Order should be withdrawn, EPA will provide Respondent with written notice of the withdrawal of this Order.
45. No modification or withdrawal of this Order shall be effective unless and until it is issued in writing by EPA.
46. If EPA determines this Order should become final as originally issued, this Order shall become final and effective seven calendar days after the date of EPA's signature of the written notification to Respondent of that determination.
47. If EPA modifies this Order, the modified order shall become final and effective seven calendar days after the date of EPA's signature of the modified Order.

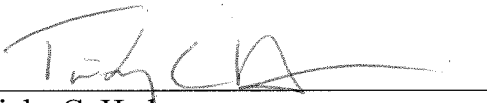
VII. GENERAL PROVISIONS

48. Respondent may seek immediate federal judicial review of a final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.
49. Neither the issuance of this Order by EPA nor compliance with this Order by the Respondent shall be deemed to relieve the Respondent of liability for or limit EPA's authority to seek any relief, penalty, fine, remedy or sanction authorized to be imposed pursuant to Section 309(b), (c), (d), and/or (g) of the CWA, 33 U.S.C. §§ 1319(b), (c), (d), and/or (g) for the violations cited in the Findings, and for any violation of any other applicable requirement of the CWA. EPA specifically reserves the right to seek any or all of the remedies specified in Section 309 for any such violations, including the violations cited in the Findings.
50. This Order does not affect Respondent's responsibility to comply with other local, state, and federal laws and regulations.
51. This Order does not restrict EPA's authority to enforce the Permit, or any section of the CWA.
52. Failure to comply fully and truthfully with this Order, within the specified timeframes, may subject Respondent to enforcement action under section 309 of the CWA, 33 U.S.C. § 1319.
53. The terms of this Order are binding on Respondent, its assignees and successors. Respondent must give notice of this Order to any successors in interest prior to transferring ownership, and must simultaneously verify to EPA, at the above address, that Respondent has given the notice.
54. EPA may use any information submitted under this Order in an administrative, civil, or criminal action.
55. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may:
 - a. Assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$16,000 per day for each violation that occurred after January 12, 2009. An administrative penalty action may total up to \$177,500 for violations that occurred after January 12, 2009;
 - b. Seek civil injunctive relief and penalties for violations of the CWA under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of \$37,500 per day for each violation that occurs after January 12, 2009; and
 - c. Seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

56. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

VIII. CERTIFICATION OF COMPLETION

57. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit to EPA a written certification of completion describing all actions taken to comply with all requirements of this Order.
58. This Order shall be terminated when EPA notifies Respondent that Respondent has complied with all requirements of this Order.



Tinka G. Hyde
Director, Water Division



Date