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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 WASTE ACTION PROJECT,)
10)
Plaintiff,)
11 v.) COMPLAINT
)
12 ASSOCIATED PETROLEUM)
PRODUCTS, INC.,)
13)
Defendant.)
14)
15 _____)

16 I. INTRODUCTION

17 1. This action is a citizen suit brought under Section 505 of the Clean Water Act
18 (“CWA”) as amended, 33 U.S.C. § 1365. Plaintiff Waste Action Project seeks a declaratory
19 judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including
20 attorneys’ and expert witnesses’ fees, for Defendant Associated Petroleum Products, Inc.’s
21 (“APP”) repeated and ongoing violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§
22 1311(a) and 1342, and the terms and conditions of its National Pollutant Discharge Elimination
23 System (“NPDES”) Waste Discharge Permit authorizing discharges of pollutants from APP’s
facility to navigable waters.

COMPLAINT - 1

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II. JURISDICTION AND VENUE

2 2. The Court has subject matter jurisdiction over Waste Action Project’s claims
3 under Section 505(a) of the CWA, 33 U.S.C. § 1365(a). The relief requested herein is authorized
4 by Sections 309(d) and 505(a) and (d) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a) and (d).

5 3. Under Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Waste
6 Action Project notified APP of its violations of the CWA and of Waste Action Project’s intent to
7 sue under the CWA by letter dated and postmarked September 20, 2021 and delivered to APP on
8 September 22, 2021 (“Notice Letter”). A copy of the Notice Letter is attached to this Complaint
9 as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. In
10 accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. §
11 135.2(a)(1), Waste Action Project notified the Administrator of the United States Environmental
12 Protection Agency (“EPA”), the Administrator of EPA Region 10, the Director of the
13 Washington Department of Ecology (“Ecology”), and of its intent to sue APP by mailing copies
14 of the Notice Letter to these officials on September 20, 2021.

15 4. At the time of filing this Complaint, more than sixty days have passed since the
16 Notice Letter and copies thereof were issued in the manner described in the preceding paragraph.

17 5. The violations complained of in the Notice Letter are continuing and/or are
18 reasonably likely to recur.

19 6. At the time of the filing of this Complaint, neither the EPA nor Ecology has
20 commenced any action constituting diligent prosecution to redress the violations alleged in the
21 Notice Letter.

22 7. The source of the violations complained of is located in Pierce County within the
23 Western District of Washington, and venue is therefore appropriate in the Western District of

1 Washington pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), and 28 U.S.C. §
2 1391(b).

3 **III. PARTIES**

4 8. Waste Action Project is suing on behalf of itself and its members.

5 9. Waste Action Project is a non-profit corporation organized under the laws of the
6 State of Washington. Waste Action Project is dedicated to protecting and preserving the
7 environment of Washington State, especially the quality of its waters. Waste Action Project is a
8 membership organization and has at least one member who is injured by APP's violations.

9 10. Waste Action Project has representational standing to bring this action. Waste
10 Action Project's members are reasonably concerned about the effects of discharges of pollutants,
11 including wastewater from APP's facility, on water quality and aquatic species and wildlife that
12 Waste Action Project's members observe, study, and enjoy. Waste Action Project's members are
13 further concerned about the effect of discharges from APP's facility on human health. In
14 addition, discharges from APP's facility lessen Waste Action Project's members' aesthetic
15 enjoyment of nearby areas. Waste Action Project's members' who live, work, fish, and recreate
16 around or use the Blair Waterway, Commencement Bay, Puget Sound, and other waters affected
17 by APP's discharges. Waste Action Project's members' concerns about the effects of APP's
18 discharges are aggravated by APP's failure to record and report information about its discharges,
19 violations, and pollution controls. The recreational, economic, aesthetic and/or health interests of
20 Waste Action Project and its members have been, are being, and will be adversely affected by
21 APP's violations of the CWA. The relief sought in this lawsuit can redress the injuries to these
22 interests.

1 11. Waste Action Project has organizational standing to bring this action. Waste
2 Action Project has been actively engaged in a variety of educational and advocacy efforts to
3 improve water quality and to address sources of water quality degradation in the waters of
4 Western Washington, including Blair Waterway, Commencement Bay, and Puget Sound. As
5 detailed herein and in the Notice Letter, APP has failed to comply with numerous requirements
6 of its NPDES Permit including effluent limits, sampling and monitoring, reporting and record
7 keeping, operation and maintenance, permit application, spill control plan, Stormwater Pollution
8 Prevention Plan (“SWPPP”), Best Management Practices (“BMPs”), and General Conditions of
9 its Waste Discharge Permit. As a result, Waste Action Project is deprived of information
10 necessary to properly serve its members by providing information and taking appropriate action
11 to advance its mission. Waste Action Project’s efforts to educate and advocate for greater
12 environmental protection and to ensure the success of environmental restoration projects
13 implemented for the benefit of its members are also obstructed. Finally, Waste Action Project
14 and the public are deprived of information that influences members of the public to become
15 members of Waste Action Project, thereby reducing Waste Action Project’s membership
16 numbers. Thus, Waste Action Project’s organizational interests have been adversely affected by
17 APP’s violations. These injuries are fairly traceable to APP’s violations and are redressable by
18 the Court.

19 12. APP is a provider of fuels, propane, and lubricants in Tacoma, Washington that
20 owns and operates a facility that is authorized to conduct operations and discharge pollutants in
21 the State of Washington.

22 13. APP’s facility is located at or about 2320 Milwaukee Way Tacoma, WA 98421
23 (the “facility”).

IV. LEGAL BACKGROUND

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person, unless in compliance with the provisions of the CWA. A discharge of a pollutant from a point source to waters of the United States without authorization by an NPDES permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and an “effluent standard or limitation” under Section 505(a)(1) and (f) of the CWA, 33 U.S.C. § 1365(a)(1) and (f). Conditions of NPDES permits are effluent standards or limitations under Section 505(a)(1) and (f) of the CWA, 33 U.S.C. § 1365(a)(1) and (f). Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), authorizes citizen suits against violators of effluent standards or limitations.

15. The State of Washington has established a federally approved state NPDES program administered by Ecology. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch. 173-220. This program was approved by the Administrator of the EPA pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

16. Under Section 402(a) of the CWA, 33 U.S.C. § 1342, Ecology has issued APP the Waste Discharge Permit NPDES number WA0038784 (the “Permit”), on September 22, 2011, which became effective on November 1, 2011, and expired on its own terms on October 31, 2016 but remains in effect. The Permit authorizes APP to discharge treated stormwater/wastewater to waters of the state, subject to certain terms and conditions.

17. The Permit imposes certain terms and conditions on those covered thereby, including discharge limits, monitoring requirements, reporting and recordkeeping requirements, operation and maintenance requirements, solid waste handling, permit application requirements,

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