

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CONCERNED CITIZENS)
OF INDEPENDENCE,)
)
Plaintiff,)
)
v.)
)
DORAN SEAFOOD, LLC f/d/b/a)
DORAN SEA-PAK, LLC)
)
Defendant.)
)

Case No.
Judge:
Magistrate:

09 - 2833
SECT. J MAG. 1

Ref. 162-001

COMPLAINT

For its Complaint, Plaintiff Concerned Citizens of Independence makes the following allegations against the Defendant, DoRan Seafood, LLC.

NATURE OF THE CASE

1. Concerned Citizens of Independence brings this lawsuit under the citizen enforcement provision of § 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), and the citizen enforcement provision of the Louisiana Environmental Quality Act, La. Rev. Stat. § 30:2026.A(1). The suit is against DoRan Seafood, LLC for its ongoing violations of the Clean Water Act, federal and state water regulations, and ongoing violations of Louisiana solid waste

accumulation and storage regulations.

2. DoRan Seafood, formerly doing business as DoRan Sea-Pak, LLC (“DoRan”), operates a shrimp processing plant which sends waste water to the Town of Independence’s Waste Water Treatment Plant (“Independence WWTP”). DoRan’s wastewater has caused and continues to pass through and interfere with the Independence WWTP, causing the Town of Independence to exceed its waste permit discharge limits. The purpose of those limits is to restrict the amount of pollutants that the Town of Independence may discharge into the Tangipahoa River. DoRan therefore causes the discharge of water with a foul smell and color into the Tangipahoa River, and violates Clean Water Act and Louisiana water regulations. *See* 40 C.F.R. 403.5; La. Admin. Code tit. 33, pt. IX, § 6109.

3. Further, DoRan’s failure to properly enclose and maintain its solid waste storage area has caused putrid odors to leave DoRan’s facility, causing irreparable injury to the facility’s neighbors, including the plaintiff’s members, in violation of La. Admin. Code tit. 33, pt. VII, §§503(A)(1) and (2).

JURISDICTION

4. This Court has original subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), the Clean Water Act, 33 U.S.C. § 1365(a), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

5. Under 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the state law claims in this case which arise under the citizen enforcement provision of the Louisiana Environmental Quality Act, La. Rev. Stat. § 30:2026.A(1), and under the solid waste accumulation and storage provisions of La. Admin. Code tit. 33, pt. VII, §§503(A)(1) and (2), because those claims “are so related to claims in the action within [this Court’s] original

jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” See 28 U.S.C. § 1367(a).

6. Plaintiff’s supplemental state-law citizen enforcement claims cover the same violations as Plaintiff’s federal citizen enforcement claims; thus the state and federal claims arise from a “common nucleus of operative fact.” See United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966).

VENUE

7. DoRan’s violations occur at its shrimp processing plant located on 136 East Railroad Road in Independence, Louisiana. Therefore, venue is proper in the Eastern District of Louisiana pursuant to § 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1).

NOTICE

8. On October 23, 2008, Concerned Citizens of Independence sent a Notice of Violation to DoRan, the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Regional Administrator of the EPA, the Secretary of the Louisiana Department of Environmental Quality (“LDEQ”), and the U.S. Attorney General pursuant to 33 U.S.C. § 1365(b)(1)(A), § 505(b)(1)(A) of the Clean Water Act. That notice complies fully with 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3(a).

9. More than sixty days have passed since Concerned Citizens of Independence sent its Notice to DoRan, EPA, and LDEQ.

10. Neither EPA nor LDEQ has commenced or is diligently prosecuting a civil or criminal action in court to redress the violations specified in the notice.

PARTIES

A. Plaintiff

11. Plaintiff, Concerned Citizens of Independence, is a non-profit organization incorporated and operating under the laws of Louisiana.
12. Concerned Citizens of Independence is a “person” under § 502(5) of the Clean Water Act. *See* 33 U.S.C. § 1362(5). In addition, the plaintiff is a “citizen” as defined by § 505(g) of the Clean Water Act. *See* 33 U.S.C. 1365(g).
13. Plaintiff Concerned Citizens of Independence is a “person” under the Louisiana Environmental Quality Act. *See* La. Rev. Stat. § 30: 2004(8).
14. Plaintiff Concerned Citizens of Independence has individual members who reside, own property, work, and recreate in areas near and downstream of the Independence WWTP where DoRan sends its wastewater. The Independence WWTP discharges to the Tangipahoa River immediately upstream from a public drinking water source, which supplies water to individual members of Concerned Citizens of Independence who reside near the source.
15. Plaintiff sues on behalf of its individual members who are injured by Defendant’s violations. These violations pose risks to public health and the environment in areas where Plaintiff’s members live, work, and recreate. Plaintiff has individual members who are exposed to obnoxious odors and potentially harmful water pollution because of Defendant’s violations. Plaintiff’s members have suffered, are suffering, and will continue to suffer injury from Defendant’s violations. These injuries are actual and concrete and the relief sought in this action would address them.
16. DoRan’s wastewater discharges contribute to violations of the Independence WWTP permit requirements. These violations contribute to pollution of the Tangipahoa River which impairs the Plaintiff’s members’ use and enjoyment of the Tangipahoa River near the Independence WWTP. In addition, odors from DoRan’s facility impair the Plaintiff’s members’

ability to enjoy their homes and neighborhoods.

B. Defendant

17. DoRan Seafood, LLC is a limited liability company registered and doing business in Louisiana. Prior to January 12, 2009, the company was registered and doing business as DoRan Sea-Pak, LLC.

18. DoRan is a “person” as defined under § 502(5) of the Clean Water Act. *See* 33 U.S.C. § 1362(5).

19. DoRan is a “person” as defined under the Louisiana Environmental Quality Act. *See* La. Rev. Stat. § 30:2004(8).

20. DoRan owns and operates a shrimp processing plant in Independence, Louisiana that sends its wastewater to the Independence WWTP, which in turn discharges wastewater into the Tangipahoa River.

LEGAL BACKGROUND

Clean Water Act

21. Congress passed the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. § 1251.

22. Clean Water Act § 505 authorizes “any citizen” to bring suit “against any person... who is alleged to be in violation of (A) an effluent standard or limitation under this chapter” and grants district courts jurisdiction “to enforce such an effluent standard or limitation ... and to apply any appropriate civil penalties under section 1319(d) of this title.” 33 U.S.C. § 1365(a).

23. The Clean Water Act defines “citizen” as “a person or persons having an interest which is or may be adversely affected.” 33 U.S.C. § 1365(g).

24. Under Clean Water Act § 309(d), “Any person who violates [Clean Water Act § 301] . . . shall be subject to a civil penalty,” which 40 C.F.R. § 19.4 caps at \$32,500 per day for each violation. 33 U.S.C. § 1319(d).
25. Clean Water Act § 505 defines “effluent standard or limitation” to include “any prohibition, effluent standard or pretreatment standards under [§ 307]. . . .” 33 U.S.C. § 1365(f)(4); *see also* 33 U.S.C. § 1317.
26. Clean Water Act § 307(b) directs the EPA to “establish[] pretreatment standards for introduction of pollutants into treatment works.” 33 U.S.C. § 1317(b).
27. Section 307(d) of the Clean Water Act prohibits an owner or operator from “operating any source in violation of any . . . effluent standard or prohibition or pretreatment standard.” *See* 33 U.S.C. § 1317(d).
28. Federal regulations implementing § 307 of the Clean Water Act prohibit users of a Publicly Owned Treatment Work (“POTW”) from “introduc[ing] into a POTW any pollutant(s) which cause Pass Through or Interference.” 40 C.F.R. § 403.5(b)(2); *see* 40 C.F.R. § 403.1.
29. Under federal regulations, “Pass Through” means:
- a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).
- 40 C.F.R. § 403.3(p).
30. Under federal regulations, “Interference” means:
- a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation)

40 C.F.R. § 403.3(k).

31. The term "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act. *See* 40 C.F.R. § 403.3(i). Section 307(c) of the Clean Water Act regulates pollutants introduced by a source that may "interfere with, [or] pass through" a POTW. *See* 33 U.S.C. § 1317(c).

32. The term "NPDES Permit" or "Permit" means a permit issued to a POTW pursuant to section 402 of the Act. *See* 40 C.F.R. § 403.3(n).

33. The Clean Water Act defines "pollutant" as "solid waste, . . . sewage, garbage, . . . biological materials, . . ." Clean Water Act § 502(6), 33 U.S.C. § 1362(6).

State Water Quality Regulations

34. Louisiana Revised Statute 30:2026(A) authorizes any "person having an interest which is or may be adversely affected, [to] commence a civil action on his own behalf against any person whom he alleges to be in violation of [the Louisiana Environmental Quality Act] or of the regulations promulgated [t]hereunder."

35. Louisiana regulations promulgated under the Louisiana Environmental Quality Act provide: "A user may not introduce into a POTW any pollutant(s) which cause pass through or interference." La. Admin. Code tit. 33, pt. IX, § 6109.A(1).

36. The discharge prohibitions in La. Admin. Code tit. 33, pt. IX, § 6109.A(1) apply "whether or not the user is subject to other national pretreatment standards, or any national, state, or local pretreatment standards." *Id.*

37. Under Louisiana regulations, "Pass through" means:

a discharge which exits the POTW into waters of the United States in quantities or

concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's LPDES permit (including an increase in the magnitude or duration of a violation).

La. Admin. Code tit. 33, pt. IX, § 6105.

38. Under Louisiana regulations, "Interference" means:

a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

a. inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes or operations, use or disposal; and

b. therefore is a cause of a violation of any requirement of the POTW's LPDES permit (including an increase in the magnitude or duration of a violation)

La. Admin. Code tit. 33, pt. IX, § 6105.

39. The term "Permit" means, "an NPDES or LPDES permit issued to a POTW pursuant to Section 402 of the [Clean Water Act, 33 U.S.C. 1251]." La. Admin. Code tit. 33, pt. IX, § 6105.

40. A "pollutant" means, "any substance introduced into the waters of the state by any means that would tend to degrade the chemical, physical, biological, or radiological integrity of such environment." La. Admin. Code tit. 33, pt. IX, § 6105.

State Solid Waste Storage Regulations

41. Under the Louisiana Administrative Code standards for Environmental Quality, "no solid waste shall be stored or allowed to be stored long enough to cause a nuisance, health hazard, or detriment to the environment as determined by the administrative authority." La. Admin Code tit. 33 pt. VII, § 503(A)(1).

42. Further, "Containers used for solid waste shall: a. prevent access by rodents and insects; b. minimize the escape of odors to the maximum extent possible; and c. keep out water and prevent leakage." La. Admin Code tit. 33 pt. VII, § 503(A)(2).

GENERAL ALLEGATIONS

Discharge of Pollutants

43. The Louisiana Department of Environmental Quality issued the Independence WWTP Permit No. LA0042544 (the "Permit"), a permit subject to section 402 of the Clean Water Act, on April 14, 2004, becoming effective on May 1, 2004. The Permit regulates the wastewater discharged from the Independence WWTP through Outfall 001 into the Tangipahoa River.
44. The Tangipahoa River is a "navigable water[]" protected under the Clean Water Act, *see* 33 U.S.C. § 1362(7), and a "water of the state" protected under Louisiana law. *See* La. Admin. Code tit. 33 pt. IX, § 2313.
45. Under the Permit, the monthly limit for Carbonaceous Biochemical Oxygen Demand ("CBOD") discharge is an average of 58 lbs per day, and the monthly limit for Total Suspended Solids ("TSS") discharge is an average of 88 lbs per day. The maximum weekly average for Fecal Coliform discharge is 400 colonies per 100ml.
46. CBOD, TSS, and Fecal Coliform are pollutants under the Clean Water Act and Louisiana state water regulations. *See* 33 U.S.C. § 1362(6); La. Admin. Code tit. 33, pt. IX, § 6105.
47. The discharge point, Outfall 001, is a point source under the Clean Water Act and Louisiana regulations. 33 U.S.C. § 1362(14); La. Admin. Code tit. 33 pt. IX, § 2313.
48. In May 2007, DoRan Seafood, LLC began sending wastewater to the Independence WWTP.
49. DoRan is a non-domestic source regulated under section 307(b), (c) or (d) of the Act.
50. According to public documents available on the LDEQ Electronic Data Management System ("EDMS") website, the Independence WWTP was not in compliance with the Permit

limits for various pollutants in the following months in 2007: May, June, July, August, September, and December; and in the following months in 2008: January, February, June, July, August, September, October, and November, the last month for which data is publically available via the EDMS website.

51. Upon information and belief, since May 2007 the Independence WWTP has discharged and continues to discharge pollutants into the Tangipahoa River in excess of the limits set forth in the Permit.

52. The Independence WWTP is a POTW under federal and state regulations. *See* 40 C.F.R. § 403.3(q) ; 33 U.S.C. § 1292(2)(A); 33 U.S.C. § 1362(4); La. Admin. Code tit. 33, pt. IX, § 107.

53. DoRan is a "source" as defined by Section 306(a)(3) of the Act, 33 U.S.C. § 1316(a)(3).

54. DoRan is user of a POTW under federal and state regulations. *See* 40 C.F.R. § 403.3(i), (j), (m),(l); 33 U.S.C. § 1317(c); La. Admin Code. tit. 33, pt. IX, § 6105.A.

55. Federal and state regulations prohibiting Pass Through and Interference apply to DoRan because it discharges wastewater from its operations into a POTW, the Independence WWTP. *See* 40 C.F.R. § 403.1(b).

56. DoRan's wastewater has caused and continues to cause "Pass Through" at the Independence WWTP resulting in the discharge of pollutants in excess of pollutant limits set forth in the Permit, violating the Clean Water Act and Louisiana state water regulations.

57. DoRan's wastewater has caused and continues to cause "Interference" at the Independence WWTP resulting in the discharge of pollutants in excess of the limits set forth in the Permit, violating the Clean Water Act and Louisiana state water regulations.

58. Upon information and belief, without declarative and injunctive relief, DoRan will continue to cause Pass Through and Interference at the Independence WWTP, causing harmful pollutants to be discharged into the Tangipahoa River in excess of the quantities permitted by LDEQ, the Clean Water Act, and Louisiana state water regulations, causing further injury to Concerned Citizens of Independence, its members, the public, and the environment.

59. Declarative and injunctive relief is necessary to compel DoRan to cease causing Pass Through and Interference at the Independence WWTP, and to deter DoRan from further violations of the law.

Odors from Solid Waste Accumulation and Storage

60. On May 17, June 12, and July 19, 2007 and February 12, March 11, April 8, and August 19, 2008, the Town of Independence conducted multiple City Hall Meetings which addressed the offensive odors and related hazards emanating from a solid waste storage container or containers maintained by DoRan, and the insufficient action by DoRan in containing these odors. DoRan's continuing failure to institute effective measures to remove the odors issuing from its solid waste container or containers was discussed repeatedly by then-Mayor Phillip Domiano and current Mayor Michael Ragusa with DoRan representatives.

61. Beginning in May 2007, LDEQ has investigated numerous and recurring citizen complaints concerning nauseating odors issuing from the area surrounding the DoRan facility and the Independence WWTP. Responding to a citizen complaint in June 2008, LDEQ investigator Joseph Burris reported an odor coming from the DoRan facility that "could be described as horrible." LDEQ Incident ID 106686 at 2. Investigator Burris further noted the ineffectiveness of odor inhibitors at the solid waste dumpster maintained by DoRan. *Id.*

62. DoRan maintains a container or containers for the storage of solid waste that has caused and continues to cause a nuisance, health hazard, and/or a detriment to the environment, a violation of La. Admin Code tit. 33 pt. VII, § 503(A)(1).
63. Further, DoRan has failed and continues to fail to minimize the escape of odors from its solid waste container or containers to the maximum extent possible, a violation of La. Admin Code tit. 33 pt. VII, § 503(A)(2).
64. Upon information and belief, without declarative and injunctive relief DoRan will continue to store its solid waste in a manner that causes nuisance, health hazards, environmental detriment, and the escape of odors, thereby injuring the Concerned Citizens of Independence, its members, the public, and the environment.
65. Declarative and injunctive relief is necessary to compel DoRan to store its solid waste in compliance with the Louisiana State Administrative Code, and to deter DoRan from further violations of the law.

FIRST CAUSE OF ACTION

Clean Water Act

66. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 59.
67. DoRan is a user of a Publically Owned Treatment Work, the Independence WWTP.
68. Federal regulations prohibiting Pass Through and Interference apply to DoRan.
69. The wastewater DoRan sends to the Independence WWTP is a "Discharge" under 40 C.F.R. § 403.3(i).
70. The wastewater DoRan sends to the Independence WWTP are discharges from a source into a POTW within the meaning of Clean Water Act § 307(d). *See* 33 U.S.C. § 1317(d).

71. DoRan's wastewater exits the Independence WWTP into the Tangipahoa River in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of Independence WWTP's Permit violations.

72. DoRan's wastewater, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the Independence WWTP's treatment processes and operations, causing the Independence WWTP to violate the Permit.

73. DoRan has violated and continues to violate the Clean Water Act by causing Pass Through and Interference at the Independence WWTP. *See* 33 U.S.C. § 1317(d); 40 C.F.R. 403.5(b)(2).

SECOND CAUSE OF ACTION

State Water Quality Regulations

74. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 59.

75. DoRan is a user of a Publically Owned Treatment Work, the Independence WWTP.

76. Louisiana state regulations prohibiting pass through and interference apply to DoRan.

77. DoRan's wastewater exits the Independence WWTP into the Tangipahoa River in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of the Independence WWTP's violations of requirements in the Permit.

78. DoRan's wastewater, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the Independence WWTP's treatment processes and operations, causing the Independence WWTP to violate requirements of the Permit.

79. DoRan violates Louisiana regulations by causing pass through and interference at Independence WWTP. *See* La. Admin. Code tit. 33, pt. IX, § 6109.A(1).

THIRD CAUSE OF ACTION

State Solid Waste Storage Regulations

80. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 65.

81. DoRan stores solid waste at its facility in Independence, Louisiana for a time long enough to cause nuisance, health hazards, and detriment to the environment, thereby violating Louisiana state regulations. La. Admin Code tit. 33 pt. VII, § 503(A)(1).

82. DoRan's container or containers for solid waste do not minimize the escape of odors to the maximum extent possible, thereby violating Louisiana state regulations. La. Admin Code tit. 33 pt. VII, § 503(A)(2).

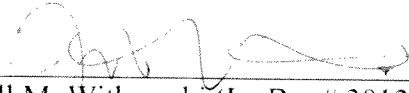
RELIEF

WHEREFORE, Concerned Citizens of Independence prays that the Court award the following relief:

- A. A declaration that DoRan is in violation of the Clean Water Act, 33 U.S.C. §1317;
- B. A declaration that DoRan is in violation of La. Admin. Code tit. 33, pt. IX, § 6109.A(1);
- C. A declaration that DoRan is in violation of La. Admin Code tit. 33 pt. VII, § 503(A);
- D. An injunction against DoRan sending wastewater to the Independence WWTP;
- E. A civil penalty in the amount of \$32,500 for each day of violation of the Clean Water Act pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4, totaling approximately \$12,837,500 since May 1, 2007;
- F. Plaintiff further requests attorney fees and expert witness fees, and reasonable litigation expenses incurred in this case, as authorized by Clean Water Act § 505(d), 33 U.S.C. § 1365(d);

G. Any other relief as this court may deem appropriate.

Respectfully submitted on this 19th day of February, 2009,



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