

B088

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.)
)
 LIBERTAS COPPER, LLC)
 d/b/a Hussey Copper)

Criminal No. 20 - 369

(33 U.S.C. §§ 1319(c)(2)(A), 1319(c)(4),
1321(b)(3), 1321(b)(5))

FILED

NOV 30 2020

INFORMATION

The United States Attorney charges:

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

GENERAL ALLEGATIONS

At all times material to this Information:

The Clean Water Act

1. The Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1251, *et seq.*, was the United States’ comprehensive water pollution control statute. The purpose of the CWA was to restore and maintain the chemical, physical, and biological integrity of the nation’s water. In addition, the CWA was enacted to prevent, reduce, and eliminate water pollution in the United States and to conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and for the use of such waters for public drinking water, agricultural, and industrial purposes. 33 U.S.C. § 1252(a).

2. The CWA prohibited the discharge of any pollutant by any person, except in compliance with the provisions of the Act. 33 U.S.C. § 1311.

3. For purposes of the Act, various terms were defined as follows:

a. The term “person” meant an individual and a corporation, 33 U.S.C. § 1362(5), as well as “any responsible corporate officer.” 33 U.S.C. § 1319(c)(6).

b. The term “discharge of a pollutant” meant the addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

c. The term “pollutant” meant, among other things, solid waste, sewage, sewage sludge, chemical wastes, and industrial and agricultural waste discharged into water. 33 U.S.C. § 1362(6).

d. The term “navigable waters” meant waters of the United States. 33 U.S.C. § 1362(7).

e. The term “point source” meant any discernible, confined, and discrete conveyance from which pollutants are discharged, including any pipe, ditch, channel, conduit, and discrete fissure. 33 U.S.C. § 1362(14).

4. The CWA authorized the discharge of pollutants in compliance with a permit issued under the National Pollution Discharge Elimination System (NPDES) by the U.S. Environmental Protection Agency (EPA) or a federally authorized state agency, including the Pennsylvania Department of Environmental Protection (PADEP). 33 U.S.C. § 1342.

5. NPDES permits authorized the discharge of pollutants into surface waters under specified conditions and imposed limits on the type and amount of pollutants that could be discharged into the waters of the United States. 33 U.S.C. §§ 1311(a), 1342.

6. NPDES permits were specific to each treatment facility. They contained general operating and maintenance requirements and numerical pollution limitations. The numerical limits were based on, among other things, the nature of the pollutants being treated, volume, treatment capacity, and the nature of the receiving waterway. NPDES permits required permit holders to participate in a self-monitoring program where they were required to collect samples prior to discharging wastewater into a receiving water, and to conduct analysis on the effluent (i.e., liquid waste or sewage) produced by the permitted facility. These permits contained daily, weekly, and monthly monitoring requirements. The permit program relied upon self-monitoring

by the permittee. Any failure with respect to self-monitoring affected the integrity of the regulatory program and could potentially affect human health and the environment.

The Defendant

7. The defendant, LIBERTAS COPPER, LLC d/b/a HUSSEY COPPER (hereinafter “HUSSEY COPPER”), was headquartered in Leetsdale, Pennsylvania, where it operated a manufacturing facility that produced flat-rolled copper products for the electrical distribution, industrial, and residential construction markets. In December 2011, HUSSEY COPPER acquired substantially all of the assets of Hussey Copper, Ltd., a limited liability partnership, out of bankruptcy. Hussey Copper, Ltd. was founded in Pittsburgh in 1848 and moved to its Leetsdale location in 1963.

8. Following the acquisition of Hussey Copper, Ltd.’s assets in December 2011, HUSSEY COPPER managed wastewater generated as a result of its copper processing via a wastewater treatment plant (WWTP). The WWTP discharged wastewater via designated internal and external outfalls. Outfall 101 was an internal sampling location within the WWTP that received wastewater from HUSSEY COPPER’s copper manufacturing. After passing through Outfall 101, wastewater from the WWTP mixed with other facility waste streams, including non-contact cooling water and stormwater runoff, before flowing through Outfall 001, which discharged directly into the Ohio River. Outfall 002 was a stormwater outfall that discharged to the Ohio River.

HUSSEY COPPER’s History of Submitting False Discharge Monitoring Reports

9. HUSSEY COPPER’s wastewater treatment system was subject to the terms and conditions of Clean Water Act NPDES Permit No. PA0000566 (“2001 Permit”), which was issued to Hussey Copper, Ltd. on or about June 1, 2001. Although the 2001 Permit expired after five years on or about May 25, 2006, it remained effective after that date by virtue of Hussey Copper, Ltd.’s submission of a renewal application prior to the expiration date. Following the acquisition

of Hussey Copper, Ltd.'s assets, HUSSEY COPPER operated under the terms of the 2001 Permit until on or about November 1, 2016.

10. The 2001 Permit established various daily and/or monthly average discharge limitations for Outfall 101 and Outfall 001. As to Outfall 101—the internal sampling location—the 2001 Permit established maximum limits for discharges of copper, oil and grease, total suspended solids (TSS), lead, and nickel, among other parameters. Likewise, as to Outfall 001—the discharge point at the Ohio River—the 2001 Permit established maximum limits for discharges of copper and oil and grease.

11. On or about October 21, 2016, HUSSEY COPPER was issued a new Clean Water Act NPDES Permit (“2016 Permit”) under the same permit number, PA00000566, which superseded the 2001 Permit when it became effective on or about November 1, 2016. As with the earlier permit, the 2016 Permit established various daily and/or monthly average discharge limitations for Outfall 101 and Outfall 001. As to Outfall 101—the internal sampling location—the 2016 Permit once again established maximum limits for discharges of copper, oil and grease, total suspended solids (TSS), lead, and nickel, among other parameters. Likewise, as to Outfall 001—the discharge point at the Ohio River—the 2016 Permit maintained maximum limits for discharges of copper and oil and grease.

12. As mandated by the CWA and Pennsylvania law, the 2001 Permit and the 2016 Permit each required HUSSEY COPPER to submit Discharge Monitoring Reports (DMRs) on a monthly basis to PADEP, documenting the quantity and quality of the discharges permitted by the applicable NPDES permit during the preceding month. The 2001 Permit and the 2016 Permit also required that each DMR be signed and certified as to its accuracy by a responsible corporate officer on behalf of HUSSEY COPPER.

13. Between at least in January 2012 and continuing through at least 2018, multiple employees of HUSSEY COPPER were responsible for obtaining samples at Outfall 101 and

Outfall 001 and documenting certain discharge readings, including pH readings—an additional parameter covered by the 2001 Permit and the 2016 Permit. HUSSEY COPPER personnel were responsible for sending samples obtained at Outfall 101 and Outfall 001 to a third-party laboratory for testing and, upon completion of such third-party testing, documenting results from the laboratory in HUSSEY COPPER's internal records.

14. Between at least in June 2012 and continuing through at least May 2017, HUSSEY COPPER knowingly submitted numerous falsified DMRs to PADEP, indicating that various discharges from Outfall 101 and Outfall 001 were within applicable permit limits, when in truth and in fact HUSSEY COPPER's own internal sampling data, including data reported by a third-party laboratory, revealed that such discharges had exceeded the relevant limits.

15. Between at least in January 2012 and continuing through at least May 2017, HUSSEY COPPER reported false values in monthly DMR submissions to PADEP as to at least 140 parameters subject to discharge limits under the 2001 Permit and 2016 Permit, including a substantial number of copper discharges, but also additional discharges of nickel and TSS, as well as various pH values. The false parameter values reported to PADEP concealed permit exceedances on the following 21 monthly DMRs, among others: June 2012, September 2013, October 2013, November 2013, December 2013, January 2014, April 2014, March 2015, September 2015, November 2015, February 2016, May 2016, August 2016, September 2016, October 2016, November 2016, December 2016, January 2017, February 2017, March 2017, and April 2017. A responsible corporate officer signed and certified each of the false DMRs submitted to PADEP during this period of time.

HUSSEY COPPER'S History of Discharging and Failing to Report Oil Sheens

16. The CWA prohibited the discharge of oil into or upon the navigable waters of the United States in quantities that "may be harmful" except in certain circumstances not relevant to this Information. 33 U.S.C. § 1321(b)(3).

17. The Administrator of EPA, pursuant to a delegation from the President, determined that discharges of oil “may be harmful” when such discharges, as relevant here, “[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines.” 40 C.F.R. § 100.3.

18. The CWA required that any corporate entity in charge of an onshore facility immediately notify the appropriate agency of the United States of any discharge of a harmful quantity of oil as soon as the entity had knowledge of such discharge. 33 U.S.C. § 1321(a)(7), (b)(5). The CWA further required that the relevant federal agency notify the appropriate state agency of the state that is, or reasonably may be expected to be, affected by the discharge of oil. 33 U.S.C. § 1321(b)(5). As such, the CWA required HUSSEY COPPER to notify the EPA immediately upon learning of HUSSEY COPPER’s discharge of a quantity of oil that “may be harmful”—e.g., an oil sheen.

19. Beginning at least in January 2012 and continuing until at least 2018, HUSSEY COPPER maintained various internal protocols and procedures for documenting oil sheens observed by HUSSEY COPPER personnel at Outfall 001 and Outfall 002. At no time was HUSSEY COPPER permitted to discharge from Outfall 002 any substance other than stormwater runoff.

20. During certain periods of time, HUSSEY COPPER personnel were required by various internal protocols and procedures to check for the presence of oil sheens multiple times per day. Oil sheen observations, or the lack thereof, were documented in handwritten logs, electronic documents, or both.

21. Between at least in January 2012 and continuing until at least 2018, HUSSEY COPPER documented in its internal logs hundreds of observed oil sheens at Outfall 001 and Outfall 002. HUSSEY COPPER documented observed oil sheens at its outfalls prior to

November 1, 2016, when the 2001 Permit was in place, as well as after that date when the 2016 Permit went into effect.

22. Between at least in January 2012 and continuing until June 2018, HUSSEY COPPER failed to report any of the observed oil sheens documented in its internal logs to EPA or PADEP.

23. On at least two occasions between in and around 2012 and in and around 2015, PADEP personnel observed the presence of oil sheens at HUSSEY COPPER's Outfall 001 during site inspections conducted pursuant to the terms of HUSSEY COPPER's 2001 Permit and subsequently notified HUSSEY COPPER that such discharges violated the NPDES permit:

a. On or about February 10, 2012, PADEP issued an NOV to HUSSEY COPPER following a site inspection at the Leetsdale facility on or about February 2, 2012. The NOV informed HUSSEY COPPER that the "presence of oil sheen at outfall #001" was a "violation of [HUSSEY COPPER's] NPDES permit and/or [Pennsylvania's] Clean Streams Law."

b. On or about June 16, 2015, PADEP issued an NOV to HUSSEY COPPER following a site inspection at the Leetsdale facility on or about June 10, 2015. Among other violations, the NOV contained discussion of a citizen complaint that was made on or about May 26, 2015, concerning a visible oil sheen on the Ohio River originating from Outfall 001. The NOV stated that "[HUSSEY COPPER] did not report this incident to [PADEP] as required by the permit and the Clean Streams Law."

24. On or about June 15, 2015—one day prior to PADEP's issuance of the June 16, 2015 NOV—a responsible corporate officer for HUSSEY COPPER corresponded via email with a representative from PADEP regarding the citizen complaint of an observed oil sheen and indicated that he would check HUSSEY COPPER's records for documentation of the sheen. In fact, HUSSEY COPPER's internal oil sheen log documented an observed oil sheen on May 26, 2015, at Outfall 001—the day of the citizen complaint.

25. On or about July 10, 2015, HUSSEY COPPER submitted a required response to the June 16, 2015 NOV issued by PADEP, addressing, among other things, the presence of oil sheens at Outfall 001. The response did not communicate to PADEP that the company's records confirmed the presence of the reported oil sheen on May 26, 2015. Notwithstanding this omission, HUSSEY COPPER asserted, "Any future sheens will be reported immediately to [PADEP]."

26. Approximately one year later, on or about July 1, 2016, HUSSEY COPPER submitted a letter to PADEP responding to certain permit violations contained in a June 2, 2016 NOV. The letter also addressed additional topics in connection with HUSSEY COPPER's then-pending renewal application for its NDPEs permit. In a section of the letter titled "Flow Diagram and Sampling Locations," HUSSEY COPPER stated that "MYCELX filters were installed to control oil discharges from the facility, and HUSSEY COPPER is pleased to report that they have performed well and that an oil sheen has not been observed at the facility outfalls since May 26 2015." The letter was signed by a responsible corporate officer on behalf of HUSSEY COPPER.

27. Contrary to HUSSEY COPPER's representation in its July 1, 2016 letter to PADEP, its internal logs reflected numerous oil sheen observations during the approximately 13 months between May 26, 2015 (i.e., the date of the citizen complaint reflected in the June 16, 2015 NOV) and July 1, 2016. Specifically, HUSSEY COPPER's logs documented oil sheens observed at Outfall 001 on the following 24 days: May 29, 2015; May 30, 2015; June 20, 2015; January 2, 2016; January 6, 2016; January 10, 2016; January 12, 2016; January 16, 2016; January 17, 2016; January 22, 2016; January 23, 2016; January 24, 2016; January 25, 2016; January 26, 2016; January 30, 2016; February 3, 2016; February 9, 2016; February 13, 2016; February 14, 2016; February 20, 2016; February 24, 2016; February 29, 2016; March 5, 2016; and March 14, 2016.

28. In and around October 2016, after lengthy negotiations, PADEP approved HUSSEY COPPER's NPDES permit renewal application and issued the 2016 Permit on October

21, 2016. The 2016 Permit expressly prohibited, among other things, the discharge of “[f]loating solids, scum, sheen or substances that result in observed deposits in the receiving water” and “[o]il and grease in amounts that cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline.”

29. Following the issuance of the 2016 Permit, HUSSEY COPPER continued to document in its internal logs the presence of oil sheens observed at Outfall 001 and Outfall 002, although it did not notify EPA or PADEP of any such discharges until in an around June 2018.

30. On or about June 15, 2018, a responsible corporate officer of HUSSEY COPPER made a retrospective notification to PADEP of oil sheens observed at Outfall 001 approximately six months earlier on December 16, December 17, and December 18, 2017. This communication was HUSSEY COPPER’s first affirmative notification of the presence of oil sheens at its outfalls since at least in and around 2012.

31. Although HUSSEY COPPER’s June 15, 2018 communication to PADEP disclosed three days’ worth of oil sheens, the company failed to disclose that its internal logs reflected additional observed oil sheens in December 2017, including on or about the 5th, 6th, 9th, 11th, 13th, 14th, 19th, 23rd, 24th, 26th, 27th, 28th, 29th, 30th, and 31st of the month.

32. HUSSEY COPPER’s internal logs also documented dozens of other observed oil sheens at Outfall 001 and Outfall 002 in and around July 2017, September 2017, October 2017, November 2017, January 2018, February 2018, March 2018, April 2018, and May 2018.

COUNT ONE

The United States Attorney further charges:

33. Paragraphs 1 through 32 of this Information are realleged and incorporated by reference as though fully set forth herein.

34. In and around March 2017, in the Western District of Pennsylvania, and elsewhere, the defendant, LIBERTAS COPPER, LLC d/b/a HUSSEY COPPER, knowingly made a false material statement in a report required to be filed under the Clean Water Act and the regulations promulgated thereunder, that is, a Discharge Monitoring Report for the month of February 2017, that falsely represented a daily maximum discharge on February 7, 2017, of 0.4 mg/L of copper, when in truth and in fact, as the defendant well know, its own internal sampling data reflected a discharge of 2.1 mg/L—a value that exceeded the daily maximum of 0.8 mg/L authorized by the defendant's 2016 NPDES permit.

In violation of Title 33, United States Code, Section 1319(c)(4).

COUNT TWO

The United States Attorney further charges:

35. Paragraphs 1 through 32 of this Information are realleged and incorporated by reference as though fully set forth herein.

36. On or about December 19, 2017, in the Western District of Pennsylvania, the defendant, LIBERTAS COPPER, LLC d/b/a HUSSEY COPPER, knowingly discharged and caused to be discharged a quantity of oil which may be harmful into a navigable water of the United States, that is, a quantity of oil from Outfall 001 that caused a film or sheen upon the Ohio River.

In violation of Title 33, United States Code, Sections 1321(b)(3) and 1319(c)(2)(A).

COUNT THREE

The United States Attorney further charges:

37. Paragraphs 1 through 32 of this Information are realleged and incorporated by reference as though fully set forth herein.

38. On or about December 19, 2017, in the Western District of Pennsylvania, the defendant, LIBERTAS COPPER, LLC d/b/a HUSSEY COPPER, a corporate entity in charge of an onshore facility from which oil was discharged in a quantity which may be harmful into a navigable water of the United States, failed to immediately notify the appropriate agency of the United States government as soon as the defendant had knowledge of the discharge, that is, the defendant failed to notify the U.S. Environmental Protection Agency of the discharge of oil from Outfall 001 in a quantity that caused a film or sheen upon the Ohio River.

In violation of Title 33, United States Code, Section 1321(b)(5).



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