UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 0 8 2009

Via Certified Mail:
7004 2510 0006 9180 4186
Return Receipt Requested

Chuck French
Owner
Posdef Power Co. LP
2526 West Washington Street
Stockton, CA 95203

Subject: Findings of Violations and Order for Compliance
EPA Docket No. CWA-309(a)-09-007

Dear Mr. French:

On March 18, 2008, representatives of the U.S. Environmental Protection Agency (EPA) and the California Regional Water Quality Control Board, Central Valley Region (Regional Board) conducted a Clean Water Act compliance inspection at Posdef Power Co. LP's Port of Stockton Facility. On July 17, 2008, EPA sent you a copy of the inspection report and requested that you install Best Management Practices (BMPs) to address BMP failures along the east fence of the facility. On July 24, 2008, Posdef Power Co. LP responded with a list of corrective actions it had taken.

After further review, EPA now includes an amended inspection report with this Order, citing an additional BMP failure noted during the inspection; inadequate BMPs at the coal storage area.

Based on the inspection, EPA today issues the enclosed Findings of Violation and Order for Compliance requiring Posdef Power Co. LP to take specific actions to bring the Facility into compliance with the Clean Water Act, including the following:

1. Prepare a Storm Water Pollution Prevention Plan for the Facility which fully complies with California's General Industrial Activities Storm Water Permit (Industrial Permit). The SWPPP must fully describe all industrial activities, describe all associated BMPs and include inspection reports, monitoring records and annual reports required by the General Permit;

2. Prepare and submit a Monitoring Program that fully complies with the Industrial Permit; and

3. Complete several additional tasks identified in the Order, within the time specified.

If you have any questions concerning this matter, please contact Ann Murphy of my staff at (415) 972-3640.

Sincerely yours,

Alexis Strauss, Director
Water Division

Enclosures

cc: Nova Clemenza, Central Valley Regional Water Quality Control Board
Richard Aschieris, Port of Stockton
Jeff Wingfield, Port of Stockton

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF: **Posdef Power Co. LP** 2526 West Washington Street Stockton, CA 95203	))))))))))	Docket No. CWA 309(a)-09-007 **FINDINGS OF VIOLATION** **AND** **ORDER FOR COMPLIANCE** Proceedings under Section 308(a) and 309(a) of the Clean Water Act, as amended, 33 U.S.C. Sections 1318(a), and 1319(a)

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

FINDINGS OF VIOLATION

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with the Act, including Section 402, 33 U.S.C. § 1342.

2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 CFR § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 CFR § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States. Pursuant to 40 CFR

§§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. Electric Services Standard Industrial Classification (SIC) 4911, falls under SIC Major Group 49 and, pursuant to 40 CFR § 122.26(b)(14)(vii), is an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.

5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations authorize EPA to, inter alia, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.

6. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activity.

7. The State of California has an EPA-approved NPDES program, and issues permits, including storm water permits, through its State Water Resources Control Board (State Board) and nine Regional Water Quality Control Boards (Regional Boards). Since 1991, the State Board has adopted two successive statewide NPDES general permits for discharges of storm water associated with industrial activity. The permit that is currently effective, General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (General Permit) was adopted on April 17, 1997.

8. All facility operators seeking coverage under the General Permit must submit a notice of intent to comply (NOI) to the State Board 14 days prior to commencing industrial operations. Industrial storm water dischargers that do not submit an NOI must submit an application for an individual NPDES permit. (General Permit, Provision E(1), pg. 6 and Attachment 3 to the General Permit.)

9. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (General Permit, Section A(1)(a), pg. 11). The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges.

10. The SWPPP must include, inter alia, a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source as well as a site map (or maps) that identifies: (a) facility boundaries and an outline of facility drainage areas, (b) the storm water collection and conveyance system, (c) an outline of impervious

areas, (d) locations where materials are directly exposed to precipitation, and (e) areas of industrial activity. (General Permit, Section A(4), pg. 12, 13 and Section A(8), pg. 17.)

11. Facility operators must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. (General Permit, Effluent Limitation B(3), pg. 4.)

12. Facility operators must develop a written monitoring program, and must conduct quarterly visual observations of non-storm water discharges, monthly visual observations of storm water events, and prescribed storm water sampling and analysis. (General Permit, Section B(1), (3), (4), and (5), pg. 24-27.) In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit, Section B(14), pg. 35.) A copy of the written monitoring program as well as records of inspections, steps taken to reduce or prevent discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit, Section B(13), pg. 34.)

13. The Port of Stockton (Port) is a division of the City of Stockton, a municipality and a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5). The majority of the property within the Port's boundaries is owned by the Port and leased to tenants operating in various industrial categories. The remaining properties are privately owned and operated.

14. The Port does not assume responsibility for compliance with storm water requirements at any of its tenant facilities. Therefore, industrial operators within the Port's boundaries must independently obtain coverage under the General Permit.

15. Posdef Power Co. LP (Posdef or Respondent) is a California Limited Partnership, licensed to do business in California and is thus a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5).

16. Posdef operates a facility within the Port's boundaries, located at 2526 West Washington Street, Stockton, California (Facility). Respondent is engaged in electric services at the Facility, an industrial activity classified under SIC 4911.

17. Respondent submitted an NOI to the State Board. The State Board assigned Waste Discharge Identification (WDID) Number 5S39I002796 to Respondent for the Facility on April 2, 1992.

18. Rainfall events at the Facility that exceed 0.1 inches are generally sufficient to generate storm water runoff. Data from the Stockton Metro Airport Weather Monitoring Station, approximately six miles from the Facility, indicate that there were approximately

164 days with more than 0.1 inches of rainfall at the Facility from November 1, 2003 through September 1, 2008.

19. Storm water runoff at the Facility discharges through storm drains located at the Facility to the San Joaquin River. The storm drains are owned by the Port and are part of its municipal separate storm sewer system (MS4). The Facility's storm drains and the Port MS4 are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

20. The storm water discharged from the Facility contains "pollutants," including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is storm water discharge associated with industrial activity as defined by EPA regulations in 40 CFR § 122.26(b)(14).

21. The San Joaquin River is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined by EPA regulations in 40 CFR § 122.2.

22. Portions of the San Joaquin River have been listed under Section 303(d) of the Act, 33 U.S.C. § 1313(d), as an impaired water body for low dissolved oxygen, electrical conductivity, selenium, and mercury among other pollutants.

23. On March 18, 2008, EPA, accompanied by Central Valley Regional Water Quality Control Board staff, inspected the Facility to evaluate Respondent's compliance with the General Permit. EPA's July 11, 2008 inspection report, was mailed to the Facility. EPA's November 24, 2008 amended inspection report includes a BMP problem noted at the coal storage area. The November 24, 2008 inspection report is attached and incorporated by reference, and contains evidence that Respondent:
    a. Failed to develop a complete SWPPP, as required by the General Permit (Section A, pg. 11-23), including:
        1. Failed to include BMPs to be implemented to control each potential pollutant and its source, as required by the General Permit (Section A(8), pg. 17).
    b. Failed to implement adequate BMPs at the Facility as required by the General Permit (Section A, pg. 11-23), including:
        1. Failed to implement adequate BMPs at the perimeter fence on Washington Street; and
        2. Failed to implement adequate BMPs to prevent runoff from leaving the coal stockpiles and entering the storm drain inlet.

24. On July 24, 2008, Posdef submitted documentation of measures taken to address BMP failures along the east fence line of the facility. EPA includes the November 24, 2008 amended inspection report with this Order, citing an additional BMP failure noted during the inspection; inadequate BMPs at the coal storage area.

25. Based on the foregoing, EPA has determined that Respondent has violated the CWA as follows:
    a. Respondent's failure to develop and implement an adequate SWPPP while engaged in industrial activity at the Facility violated the General Permit (Provision E(2), pg. 6, and Section A, pg. 11-23), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a); and
    b. Respondent's failure to develop and implement adequate BMPs at the Facility violated the General Permit (Effluent Limitation B(3) pg. 4), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and thus violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violations and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Section 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ordered that Respondent comply with the following requirements:

26. Immediately upon receipt of this Order, Respondent shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.

27. Within 15 days of receipt of this Order, Respondent shall submit a certified statement indicating the date of its commencement of industrial activities at the Facility.

28. Within 15 days of receipt of this Order, Respondent shall submit a photocopy of the SWPPP currently in use at the Facility. Respondent shall include any and all inspection reports, monitoring records, and Annual Reports required by the General Permit. If no such reports or records exist, Respondent shall state that no such records exist.

29. Within 15 days of receipt of this Order, Respondent shall submit a photocopy of the SWPPP, as it existed on March 18, 2008. Respondent shall include any and all inspection reports, monitoring records, and Annual Reports required by the General Permit. If no such reports or records exist, Respondent shall state that no such records exist.

30. Within 21 days of receipt of this Order, Respondent shall complete interim cleanup and housekeeping measures (Interim Measures) for all of the Facility's areas of industrial activity, including but not limited to:
    a. Implementation of adequate BMPs at the perimeter fence area of Washington Street, and
    b. Implementation of adequate BMPs at the coal storage area.

31. Within 21 days of receipt of this Order, upon completion of the Interim Measures, Respondent shall submit a Notice of Completion, which shall include a list of the Interim Measures taken, the date each Interim Measure was completed, the person(s) responsible for overseeing completion of each Interim Measure, and copies of documents associated with the completion of the Interim Measures, such as contracts, permits, manifests, and photographs.

32. In performing the Interim Measures, care shall be taken to ensure they do not cause or contribute any runoff to waters of the United States, the municipal storm drains, or the municipal sewer system. Care shall be taken to ensure compliance with all applicable federal, state, and local waste storage and disposal requirements.

33. Within 45 days of the receipt of this Order, Respondent shall submit a revised SWPPP that fully complies with the General Permit. The SWPPP revisions shall include, among all other required elements:
    a. A facility site map;
    b. A listing of all Potential Pollutant Sources, such as coal manufacturing and storage with associated BMPs; and
    c. A signature and certification for the SWPPP by Respondent's appropriate representative.

34. Within 45 days of the receipt of this Order, Respondent shall submit a revised written Monitoring Program that fully complies with the General Permit.

35. Within 45 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with: development of the revised SWPPP; projected incremental annual costs associated with implementation of the revised SWPPP; development of the revised Monitoring Program; projected incremental annual costs associated with implementation of the revised Monitoring Program; and any other costs associated with complying with this Order.

36. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 CFR § 122.22 (b)(2)) and shall include the following statement:

> "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, I certify that 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 information, including the possibility of

fine and imprisonment for knowing violations."

37. All submissions requested by this Order shall be mailed to the following address:

U. S. Environmental Protection Agency - Region 9
Clean Water Act Compliance Office WTR-7
75 Hawthorne Street
San Francisco, CA 94105
Attention: Ann Murphy

All telephone inquiries should be made to Ann Murphy, Clean Water Act Enforcement Officer, at (415) 972-3640.

38. Respondents shall send a copy of all submissions required under this Order to:

California Regional Water Quality Control Board –Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Attention: Nova Clemenza

39. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.

40. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.

41. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.

42. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).

43. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA

will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.

44. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.

45. This Order shall become effective upon the date of receipt by Respondent.

_____ _____ _____

Alexis Strauss, Director
Water Division

Date

United States Environmental Protection Agency
Washington D.C. 20460

EPA NPDES Industrial Stormwater Compliance Inspection Report

Section A: National Data System Coding

NPDES	Permit ID Number
	5 s 3 9 i 0 0 2 7 9 6

SIC CODE: 4 9 1 1

Section B: Facility Data

Name and Location of Facility Inspected	Entry Time/Date	Permit Effective Date
Posdef Power Co LP **2526 West Washington Street** **Stockton, CA 95203**	**3/18/2008 1:10 p.m.** Exit Time/Date **3/18/2008 2:50 p.m.**	**4/2/1992** Permit Expiration Date

Name(s) of On-Site Representatives	Title(s)	
Thomas Stimson **Owner: Chuck French**	**Plant Production Manager (1 year)** **Plant General Manager**	
Name, Address of Responsible Official **Doug Hale**	Title **Operator (1 year)**	
Receiving Water / MS4 San Joaquin River	Phone Number **(209) 320 - 3717**	Contacted: YES ___ NO ___

Section C: Areas Evaluated During Inspection
(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

S	Permit	S	Records/Reports	S	Facility Site Review		Effluent/Receiving Waters	S	Self-Monitoring Program

Section D: Summary of Findings/Comments (Attach addilional sheets if necessary)

8 acre facility. 50 megawatt coal fired power plant.

Coal piles fenced.
One location for sampling.
All stormdrains have socks installed.
Discharge runs through an oil/water separator.

Fence is along Washington Street. Stormwater sheetflow is escaping under this fence. Wattles, intended to direct sheetflow to the oil/water separators are in poor condition and too small to contain stormwater.

Coal is stored adjacent to the facility to the East. See photo DCSN0564.
The coal is being moved by bulldozers as needed. No BMPs are in place which would contain runoff in a rain event.
Area is sloped from West to East. Stormwater runoff from the coal storage runs over the road, owned by the Port, to just over the railroad tracks into the MS4 stormdrain #216 (Port Authority #4), 120 feet to the East..

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Telephone	Date
Ann Murphy	**US EPA Region 9** **Clean Water Act Compliance Office (WTR-7)** **(415) 972-3640**	**11/24/2008**
Signature of Reviewer **Jeremy Johnstone**	Agency/Office **US EPA Region 9** **Clean Water Act Compliance Office (WTR-7)** **(415) 972-3499**	Date **11/24/2008**

Photo Log	
Image No.	Description
DSCN0560	Title page.
DSCN0561	Socks installed on all stormdrains. Flow is treated by oil/water separators, then discharged to MS4.
DSCN0562	Wattle along the fence on Washington Street is too small to contain and direct sheetflow to the oil/water separators.
DSCN0563	Same fence as photo DSCN0562., Notherly part of the fence without a wattle installed.
DSCN0564	Coal storage area, located on the eastern side of the facility. Facing South. Bulldozer moving the coal.
DSCN0565	Same coal storage area as photo DSCN0564. Facing West. No berm between the road (owned by the Port) and the coal storage.

46 rt Stockto

POSDE

3/18/08

1:10PM

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