

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2013-0020
)	
AUX SABLE LIQUID PRODUCTS, INC)	Proceeding to Assess a Class II Civil
6155 East U.S. Route 6)	Penalty Under Section 309(g) of the
Morris, Illinois 60450)	Clean Water Act, 33 U.S.C. §1319(g)
)	
RESPONDENT)	
_____)	

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), codified at 40 C.F.R. part 22.
2. Complainant is the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 ("EPA").
3. Respondent is Aux Sable Liquid Products, Inc. (Respondent), the owner and operator of an industrial facility located at 6155 East U.S. Route 6, Morris, Illinois.
4. Federal regulations, at 40 C.F.R. § 22.13(b), provide that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. For the purposes of this proceeding, and pursuant to 40 C.F.R. § 22.18(b) and (c), Respondent: (a) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; and (b) neither admits nor denies the facts set forth in this CAFO.
8. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

Statutory and Regulatory Background

9. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, inter alia, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific terms and conditions.
11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, inter alia, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
12. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.
13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.
14. 40 C.F.R. § 122.2 defines "waters of the United States" to include all waters which are, were or may be used in interstate or foreign commerce, including tributaries and wetlands.
15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation implementing a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

General Allegations

16. Respondent owns and operates an industrial facility located at 6155 East U.S. Route 6, Morris, Illinois.
17. Respondent is a "person" as that term is defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).
18. Respondent discharges wastewater from its facility through Outfalls 001, 002 and 003 to the Illinois River.
19. Outfalls 001, 002 and 003 are each a "point source" as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The Illinois River is a "navigable water" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
21. Depending on the outfall, the wastewater discharged by Respondent may contain, inter alia, total suspended solids, iron, biochemical oxygen demand, and fecal coliform which are "pollutants" as that term is defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).
22. Pursuant to Section 402(b) of the CWA, 33 U.S.C § 1342(b), the Administrator of the EPA, on October 23, 1977, approved a program whereby the State of Illinois, through the Illinois Environmental Protection Agency ("IEPA"), was authorized to issue and administer NPDES permits as set forth in the CWA and in the Memorandum of Agreement between EPA and the IEPA dated May 12, 1977. EPA retains independent authority to enforce the CWA in Illinois, including enforcing the conditions of NPDES permits issued by IEPA.
23. On February 25, 2008, the IEPA issued NPDES permit no. IL0026662 (the permit) to Respondent. The permit had an expiration date of February 28, 2013. The Respondent timely filed a renewal application for its NPDES Permit.
24. The permit was renewed on May 17, 2013 and was effective on June 1, 2013. The permit has an expiration date of May 31, 2018.
25. The 2008 permit authorized the Respondent to discharge pollutants through Outfalls 001, 002 and 003 from its facility to the Illinois River, subject to the terms and conditions set forth in the permit pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit contained effluent limitations on the amount of total suspended solids, iron, biochemical oxygen demand, and fecal coliform that Respondent may discharge from Outfalls 001, 002 and 003.

Violations - Discharges in Excess of Permit Limits

26. On numerous occasions from August 2008 to November 2012, Respondent discharged pollutants

to the Illinois River in amounts that exceeded the effluent limitations in the 2008 permit for daily maximum limits and monthly average limits of total suspended solids and iron at Outfall 2 and biochemical oxygen demand, total suspended solids and fecal coliform at Outfall 003.

27. Respondent's discharges of pollutants in excess of the amounts authorized by its 2008 permit constitute violations of the permit and of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
28. Complainant alleges that according to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent's violations of Section 402 of the CWA, 33 U.S.C. § 1342, subject Respondent to civil penalties not to exceed \$16,000 per day of violation and a maximum of \$177,500.

Terms of Settlement
Assessment and Payment of Penalty

29. Pursuant to section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Complainant determined that an appropriate civil penalty to settle this action is \$46,321. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, history of violations, degree of culpability, economic benefit resulting from the violations, and its agreement to perform supplemental projects and any other factors justice may require.
30. Within 45 days after the effective date of this CAFO, Respondent must pay the \$46,321 civil penalty for the CWA violations by sending a check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must state the docket number of this CAFO, and any assigned billing document number, discussed below.

31. This civil penalty is not deductible for federal tax purposes.
32. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk
Mail Code (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard

Chicago, Illinois 60604-3590

Peter Felitti
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Donald R Schwer III
Water Enforcement & Compliance Assurance Branch (WC-15J)
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

33. Respondent's failure to pay the assessed civil penalty in accordance with the provisions of this CAFO may result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Other Matters

35. This CAFO constitutes a complete and full settlement of claims, and resolves the liability for federal civil penalties of the Respondent and its officers, directors and employees, arising out of the violations alleged in the CAFO.
36. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes.
37. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right: (a) to take any action authorized under Section 309 of the CWA for any matters other than the violations alleged in this CAFO; and (b) to enforce compliance with this CAFO.

38. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Site.
39. Each party agrees to bear its own costs accrued in the course of this action.
40. Pursuant to 40 C.F.R. § 22.38, the State of Illinois was notified of this proceeding and the other terms of this settlement.
41. The effective date of this CAFO is thirty (30) days after the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) and (5) of the CWA, 33 U.S.C. § 1319(g)(4)(C) and (5).
42. This CAFO constitutes the entire agreement between the parties.
43. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Supplemental Environmental Projects

44. Respondent must complete two supplemental environmental projects (SEP) designed to protect the environment or public health by reducing the amount of pollutants that it discharges.
 - a. Within 90 days of the effective date of this CAFO, Respondent will perform a study to determine feasibility to eliminate or reduce discharge from Outfall 002 by recycling the current streams from its cooling tower.
 - b. Within 120 days of the effective date of this CAFO, Respondent will change the treatment system for Outfall 003 to a Fixed Activated Sludge Treatment system.
45. Respondent must spend at least \$75,000 for the Outfall 002 SEP and at least \$200,000 for the Outfall 003 SEP.
46. Respondent certifies that it is not required to perform or develop either SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for either SEP in any other enforcement action.
47. The U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

48. Respondent must submit a SEP completion report to U.S. EPA for both projects by December 31, 2014. This report must contain the following information:

- a. Detailed description of the SEPs as completed;
- b. Description of any operating problems and the actions taken to correct the problems
- c. Itemized costs of goods and services used to complete the SEPs documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEPs in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEPs (quantify the benefits and pollution reductions, if feasible).

49. Respondent must submit all notices and reports required by this CAFO by first class mail to the persons listed in Paragraph 32, except no notice or report need to be sent to the Regional Hearing Officer.

50. In the report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

51. Following receipt of the SEP completion report described in paragraph 48, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report.
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 53, below.

52. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the

SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 53, below.

53. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:
- a. If Respondent does not complete within 90 days of the effective date of this CAFO the Outfall 002 SEP described in Paragraph 44a, Respondent will pay a stipulated penalty of \$28,394. If Respondent pays this stipulated penalty, Respondent will not perform the Outfall 002 SEP described in Paragraph 44a and will not be liable for any other stipulated penalties for the Outfall 002 SEP.
 - b. If Respondent commences the Outfall 002 SEP described in Paragraph 44a, and abandons or otherwise does not complete the project, then Respondent will pay a stipulated penalty of \$28,394.
 - c. If Respondent has completed the Outfall 002 SEP described in Paragraph 44a and has spent less than \$75,000,
 - i. If Respondent has spent at least 90% of the \$75,000 required for this project, then, Respondent will not pay a stipulated penalty under this Paragraph.
 - ii. If Respondent has spent less than 90% of the \$75,000 required for this project, then Respondent will pay a stipulated penalty of \$10,000.
 - d. If Respondent has completed the Outfall 002 SEP described in Paragraph 44a, but the SEP is not satisfactory, Respondent must pay \$6,000, in addition to any penalty required under subparagraph c, above.
 - e. If Respondent does not commence within 120 days of the effective date of this CAFO the Outfall 003 SEP described in Paragraph 44b, Respondent will pay a stipulated penalty of \$102,785. If Respondent pays this stipulated penalty, Respondent will not perform the Outfall 003 SEP described in Paragraph 44b and will not be liable for any other stipulated penalties for the Outfall 003 SEP.
 - f. If Respondent commences Outfall 003 SEP described in Paragraph 44b, and abandons or otherwise does not complete the project, then Respondent will pay a stipulated penalty of \$102,785.

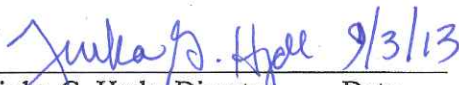
- g. If Respondent has completed the Outfall 003 SEP described in Paragraph 44b and has spent less than \$200,000,
 - i. If Respondent has spent at least 90% of the \$200,000 required for this project, then, Respondent will not pay a stipulated penalty under this Paragraph.
 - ii. If Respondent has spent less than 90% of the \$200,000 required for this project, then Respondent will pay a stipulated penalty of \$10,000.
- h. If Respondent has completed the Outfall 003 SEP described in Paragraph 44b, but the SEP is not satisfactory, Respondent must pay \$6,000, in addition to any penalty required under subparagraph g, above.
- i. If Respondent fails to timely submit the SEP completion report for the SEPs, Respondent must pay a stipulated penalty of \$100 per day for up to 30 days. These penalties will accrue from the date Respondent was required to meet the milestone until it achieves compliance with the milestone. If Respondent does not submit any report within 30 days after the date required in Paragraph 48, then Respondent will be considered to have abandoned the project for which the report is due, will owe the stipulated penalty set forth in Paragraph 53i and will be subject to the stipulated penalty in Paragraph 53b or 53f as appropriate.

54. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

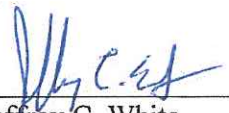
55. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 32, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

56. Any public statement that Respondent makes referring to the SEP must include the following language, "Aux Sable Liquid Products Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Aux Sable Liquid Products Inc. for violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

57. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEPs under the terms of this CAFO.
58. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs.

 9/3/13

Tinka G. Hyde, Director Date
Water Division
U.S. Environmental Protection Agency
Region 5

 8/27/2013

Jeffrey C. White Date
Vice President of U.S. Operations
Aux Sable Liquid Products, Inc.

In the Matter of:
Aux Sable Liquid Products, Inc.
Docket No. **CWA-05-2013-0020**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5