



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. Environmental
Protection Agency-Region 2
2016 MAY 10 AM 6:53
REGIONAL HEARINGS
CLERK

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7015 0640 0001 0675 9126

Bryan P. Franey, Esq.
Manko, Gold, Katcher, Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

Re: In the Matter of The Skydyne Company
Docket No. CWA-02-2015-3401

Dear Mr. Franey:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) that resolves the above referenced matter. Please note that first payment of the civil penalty assessed must be paid within thirty (30) days of the Effective Date of the Final Order, which is the date of filing with the Regional Hearing Clerk (Section V of the CAFO).

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely,

Kara E. Murphy, Esq.
Office of Regional Counsel
Water & General Law Branch

Enclosure

cc: Karen Maples, Regional Hearing Clerk
Helen Ferrara, Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

U.S. Environmental
Protection Agency-Region 2
2016 MAY 19 PM 6:53
REGIONAL HEARING
CLERK

IN THE MATTER OF:

The Skydyne Company
100 River Road
Port Jervis, New York 12771

Respondent

Proceeding pursuant to Section
309(g) of the Clean Water Act, 33
U.S.C. 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

**DOCKET NO.
CWA-02-2015-3401**

I. PRELIMINARY STATEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA” or “Complainant”), issued, on February 5, 2015, a “Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing” (“Complaint”) to Respondent, The Skydyne Company.

Complainant and Respondents (collectively, “the Parties”), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO” or “Agreement”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

II. PROCEDURAL AND FACTUAL FINDINGS

1. EPA initiated this proceeding to achieve compliance with the Clean Water Act (“CWA” or “Act”) pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. §1319(g)(2)(A).
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and 40 C.F.R. 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and Revocation, Termination or Suspension of

Permits” (“CROP”), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.

3. The Complaint alleges violations of the federal pretreatment standards and requirements promulgated pursuant to Section 307(b) of the Act, 33 U.S.C. §1317(b), and enforceable pursuant to Section 307(d) of the Act, 33 U.S.C. §1317(d), as the violations pertain to Respondent’s facility located at 100 River Road, Port Jervis, NY 12771 (“Facility”). The Complaint specifically alleges Respondent’s failure to: (1) submit the required Periodic Reports for December 31, 2011, June 30, 2012, December 31, 2012, June 30, 2013, December 31, 2013, and June 30, 2014, as required by 40 C.F.R. §403.12(e); (2) meet the Metal Finishing Standard limits for cyanide, cadmium, chromium, copper, lead, nickel, silver, and zinc as required by 40 C.F.R. §433.15(a); and (3) notify the Control Authority within 24 hours of becoming aware of the violation, repeat sampling and analysis, and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, as required by 40 C.F.R. §403.12(g)(2).
4. This action was public noticed between February 13, 2015 and March 16, 2015. No comments were received.
5. Respondent requested extensions of time for filing an Answer and requesting a hearing pursuant to the CROP, and a settlement was reached in the intervening time.
6. On April 15, 2015, Respondent submitted to EPA new revised lab results for the March 30, 2012 sample demonstrating that it was within the regulatory limits for copper, lead, nickel, silver and zinc.
7. At the time of the alleged violation, Respondent’s Facility discharged on average 750 gallons/day only three days per year from the chromium treatment tank and discharge a maximum of 390 gallons/day five days per week from the overflow rinse tanks and the water jet system. In August 2014, Respondent installed a new holding tank that allows for the re-use of process wastewater at Respondent’s Facility. Respondent has not discharged from the holding tank since August 2014, although such discharges would not be prohibited provided that applicable pretreatment standards are met.
8. On August 5, 2015, Respondent submitted to EPA a Standard Operating Procedures (“SOP”) for employee training and completed its revision of the SOP on November 4, 2015, which was approved by EPA. By November 6, 2015, Respondent’s employees completed training of the revised SOP.
9. On December 22, 2015, Skydyne submitted its Periodic Report. The Report indicated that Respondent’s Facility is in compliance with the federal pretreatment standards.

III. CONSENT AGREEMENT

10. The Paragraphs above are incorporated herein by reference as though fully set forth at length.

11. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in the Complaint without further litigation and the expense and effort that litigation entails.
12. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
13. Respondent waives any defenses Respondent might have as to jurisdiction and venue.
14. For the purposes of this proceeding, Respondent neither admits nor denies the allegations set forth in the Complaint, and consents to the terms of this CA/FO. EPA and Respondent expressly acknowledge that Respondent's agreement to pay the penalty pursuant to Paragraph 18 shall not constitute an admission of the alleged violations in the Complaint, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.
15. For the purpose of this proceeding, Respondent hereby waives Respondent's rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this CA/FO.
16. Based upon the foregoing and pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

A. Payment of Civil Penalty

17. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), given the nature of the alleged violations, EPA has determined that **Fourteen Thousand Dollars (\$14,000)** is an appropriate civil penalty to settle this action.
18. Respondent shall pay the penalty amount, with interest, in accordance with the schedule in the table below. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Time to be considered received that day.

Payment Plan (Due Date)	Amount	Interest	Total
1 st payment due within 30 days of the Effective Date of the Final Order	\$5,000	\$11.67	\$5,011.67
2 nd payment due within 360 days of the Effective Date of the Final Order	\$3,000	\$82.60	\$3,082.60
3 rd payment due within 720 days of the Effective Date of the	\$3,000	\$60.00	\$3,060.00

Final Order			
4 th payment due within 1080 days of the Effective Date of the Final Order	\$3,000	\$30.00	\$3,030.00

19. Payment shall be made by one of the following methods:

By cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, made payable to "Treasurer, United States of America," and mailed to:

Regular Mail

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

Overnight Mail

U.S. Bank
 Government Lockbox 979077
 U.S. EPA Fines and Penalties
 1005 Convention Plaza
 Mail Station SL-MO-C2-GL
 St. Louis, MO 63101

By Wire Transfer: Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
 Account = 68010727
 SWIFT address = FRNYUS33

33 Liberty Street
 New York, NY 10045

Field tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online: This option is available through the Department of Treasury, at www.pay.gov. Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

20. Respondent shall send a copy of the check, or record of payment if made by other means, immediately following payment, to:

Kara Murphy, Esq.
 Office of Regional Counsel
 U.S. Environmental Protection Agency, Region 2
 290 Broadway, 16th Floor
 New York, NY 10007;

Alia Roufaeal, Engineer
Division of Enforcement and Compliance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007;

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

21. In the event payment is not received by the specified due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six percent (6%) penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
22. Respondent shall not claim the penalty as a federal or other tax deduction or credit.
23. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.

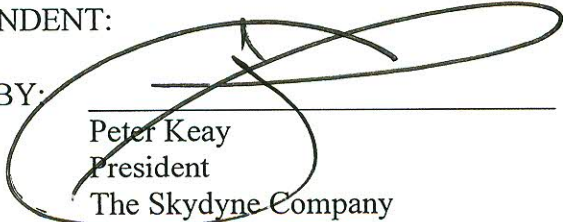
IV. GENERAL PROVISIONS

24. The provisions of this CA/FO shall apply to and be binding on Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligations to comply with the CA/FO.
25. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
26. This Agreement shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

27. This Agreement constitutes a final settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Nothing in this Agreement is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Agreement shall not be a defense to any enforcement actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for violations other than those alleged in the Complaint.
28. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
29. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
30. Respondent consents to service upon it by delivery of a copy of this Agreement by mail or by an EPA employee other than the Headquarters or Regional Hearing Clerks.

RESPONDENT:

BY:



Peter Keay
President
The Skydyne Company

DATE:

5/4/16

COMPLAINANT:

BY:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistant
U.S. EPA, Region 2
New York, New York 10007-1866

DATE:

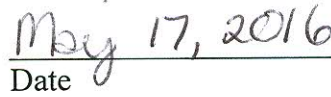
5/16/16

V. FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, New York, NY.



Helen S. Ferrara
Regional Judicial Officer
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007



Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

IN THE MATTER OF:

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Port Jervis, New York 12771

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Clean Water Act, 33 U.S.C. § 1319(g)

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO. CWA-02-2015-3401

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

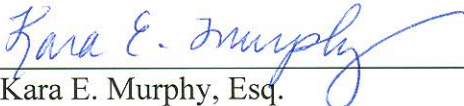
Copy by Intra Office Mail to:

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

Copy by Certified Mail Return Receipt Requested:

Bryan P. Franey, Esq.
Manko, Gold, Katcher, Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

Dated: May 17, 2016
New York, New York


Kara E. Murphy, Esq.