



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN - 8 2020

CERTIFIED MAIL 7019 0700 0000 6131 2586
RETURN RECEIPT REQUESTED

Marel, Inc.
c/o: Ms. Kara Kezios, Counsel
8145 Flint Street
Lenexa, Kansas 66214

Re: Administrative Compliance Order on Consent, Docket No. CWA-04-2019-4750 Consent Agreement and Final Order, Docket No. CWA-04-2019-4500(b)
Marel, Inc.

Dear Ms. Kezios:

Enclosed please find fully executed copies of the Administrative Compliance Order on Consent and the Consent Agreement and Final Order that have been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Administrator. Please note the payment instructions in Section IV of the Consent Agreement and Final Order.

If you have any questions or concerns regarding this matter, please contact Mr. David Phillips at (404) 562-9773. Legal inquiries should be directed to Ms. Kavita Nagrani, Associate Regional Counsel, at (404) 562-9697.

Sincerely,

A handwritten signature in cursive script that reads "Daniel J. O'Donoghue for".

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement & Compliance Assurance Division

Enclosures

cc: Mr. Lewis Hays
Georgia Environmental Protection Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
MAREL, INC.)	FINAL ORDER
GAINESVILLE, GEORGIA,)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2019-4500(b)

2019-07-09 11:15

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40,176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, of the EPA, Region 4 ("Complainant").

II. EPA's Allegations

3. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into POTWs that discharge to navigable waters. The General Pretreatment Regulations, found at 40 C.F.R. Part 403, are designed to ensure that each POTW can comply with its National Pollutant Discharge Elimination System ("NPDES") permit.

4. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the operation of any source in violation of any effluent standard, prohibition, or pretreatment standard promulgated under Section 307 of the CWA, 33 U.S.C. § 1317.

5. All discharges from industrial users to a Publicly Owned Treatment Works ("POTW") are subject to the pretreatment standards and requirements in 40 C.F.R. Part 403.

6. The EPA has promulgated pretreatment standards for specified categories of industrial users pursuant to Section 307(b) of the CWA. These categories of industrial users, or

“categorical” industrial users, are subject to specific pretreatment requirements set forth at 40 C.F.R. Parts 405-471.

7. Noncompliance with any pretreatment standard, prohibition or effluent standard is a violation of the CWA. 33 U.S.C. § 1317.

8. Marel, Inc. (“Marel” or “Respondent”) is a corporation duly organized and existing under the laws of the State of Kansas and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is thus subject to its requirements.

9. At all times relevant to this action, Respondent owned and operated a facility that develops and manufactures poultry processing equipment (“Facility”) located at 1024 Airport Parkway in Gainesville, Hall County, Georgia.

10. Respondent discharged from its Facility “pollutants” subject to “pretreatment standards” and “prohibitions” within the meaning of Sections 307(b), (c) and (d) of the CWA, 33 U.S.C. § 1317(b), (c) and (d). Such pollutants have been discharged from the Facility to the Flat Creek Wastewater Treatment Plant (“WWTP”), located on Old Flowery Branch Road in Gainesville, Georgia, and its conveyances, which together comprise a “POTW” and “municipality” within the meaning of Sections 212(2) and 502(4) of the CWA, 33 U.S.C. §§ 1292(2) and 1362(4). This POTW is owned and operated by the City of Gainesville, Georgia (“Gainesville”).

11. The Facility's manufacturing operation also integrates an electropolishing process. Electropolishing imparts a surface conversion to metal workpieces, which is a core metal finishing operation identified in 40 C.F.R. § 433.10(a). Because the Facility performs a core process, the categorical pretreatment standards and requirements in 40 C.F.R. Part 433 apply to its process wastewaters if discharged to a POTW, including its ancillary cleaning and testing wastewaters.

12. Upon discharging wastewater regulated by a categorical standard to a POTW, the Facility qualifies as a “significant industrial user,” pursuant to 40 C.F.R. § 403.3(v).

13. The Facility is a “new source,” as defined in 40 C.F.R. § 403.3(m), because the standards applied to the Facility after the EPA published proposed standards for Part 433 on August 31, 1982.

14. Pursuant to 40 C.F.R. § 403.6(b), “new sources,” as defined at 40 C.F.R. § 403.3(m), shall install and have in operating condition all pollution control equipment required to meet applicable Pretreatment Standards prior to beginning discharge to a POTW.

15. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a state may establish its own pretreatment program by receiving approval of the program by the Administrator of the EPA.

16. The Georgia Environmental Protection Division (“GAEPD”) is the state agency with the authority to administer the Pretreatment Program in Georgia pursuant to 33 U.S.C. § 1342(b), implementing regulations, and a Memorandum of Agreement dated October 24, 2007. As such, GAEPD is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

17. In states authorized to implement their own pretreatment programs, the EPA retains enforcement authority, pursuant to 33 U.S.C. §§ 1319(a)(3) and 1342(i).

18. Pursuant to 40 C.F.R. § 403.8, Gainesville has developed and obtained a pretreatment program from the Approval Authority. Gainesville is, therefore, the “Control Authority” for the Facility, as defined by 40 C.F.R. § 403.3(f).

19. Pursuant to 40 C.F.R. §§ 403.12(b), 403.12(d), 403.12(e), 403.12(g), 403.12(l) and 403.12(o), a new source categorical industrial user must self-report and retain record of certain information on its potential discharge to the Control Authority at least 90 days prior to commencing discharge, 90 days after commencing discharge, and at least twice annually thereafter.

20. On March 24, 2000, September 15, 2000, and October 27, 2000, a contractor hired by the Facility sampled its wastewater being discharged to the POTW. The samples were collected at a sewer manhole located adjacent to the main entrance to the Facility where untreated process wastewater regulated by Part 433 had combined with, and been diluted by, non-process wastewater.

21. In a November 15, 2000, letter, the Facility’s contractor advised that the process wastestream samples contained metals outside of acceptable standards and that the sewer manhole located adjacent to the main entrance to the Facility was the only feasible location to conduct compliance monitoring.

22. On August 28, 2001, a fourth sample of the combined discharge to the POTW was collected from a newer sampling manhole constructed at the Facility. This sample indicated compliance with pretreatment standards, which EPA believes was the result of greater dilution to the untreated categorical waste stream.

23. On February 27, 2002, the Facility applied for a significant industrial user permit from the Control Authority for its ongoing discharge of process flows to the POTW. The Facility’s application did not indicate that a Part 433 electropolishing operation was being conducted. The Facility’s application also did not disclose that metals were “Known to be Present” in the Facility’s discharge based on the four samples taken between 2000 and 2001 (the application denoted “Suspected Present”). Also, Respondent incorrectly certified that the Facility was not subject to an existing Pretreatment Standard (i.e., not a categorical user).

24. Review of Respondent's February 27, 2002, permit application by the Control Authority resulted in the Facility being classified as non-categorical, and therefore a non-significant user, so a permit was not required for the Facility.

25. On September 3, 2015, an EPA contractor conducted a Pretreatment Reconnaissance Inspection ("Inspection") of the Facility to assess Respondent's compliance with the pretreatment standards and the CWA. The Facility was advised in the closing conference that Part 433 standards have likely applied to the discharge.

26. On July 7, 2016, the EPA sent the Respondent a Notice of Violation and Opportunity to Show Cause pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and an Information Request pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. A copy of the September 3, 2015, Inspection Report was enclosed with this letter.

27. On July 24, 2016, the Respondent formally responded to the EPA's Information Request and provided a certification of its response.

28. In early August 2016, the Respondent accepted the recommendation in the Inspection Report to withhold its discharge from the POTW and began collecting its process wastewaters in totes for storage and disposal off-site.

29. On April 27, 2017, the EPA sent a supplemental Information Request to the Respondent pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

30. On May 10, 2017, a Show Cause meeting was held between the EPA and the Respondent to discuss questions resulting from the EPA's review of the initial Information Request submission and to resolve the recent supplemental request.

31. On May 24, 2017, the Respondent formally responded to the EPA's supplemental Information Request and provided a certification of its response on September 7, 2017.

32. On November 28, 2017, Respondent advised the EPA that it would take steps to permanently disconnect its process discharge lines from the POTW.

33. On March 20, 2019, the EPA revisited the Facility to perform a follow-up compliance inspection in support of its enforcement case ("Follow-up"), accompanied by GAEPD. Respondent provided updated information on steps it had taken to permanently disconnect its process discharge lines from the POTW.

34. During the Follow-up, the EPA observed that two new evaporator systems were installed to manage the regulated wash waters, and that their associated drains were disconnected. The EPA also observed a large floor drain in the utility room of the newer annex building that is still connected and discharging to the Facility's oil-water separator, which discharges into the POTW. Etching on the concrete floor indicated that a chemical discharge

from the adjacent pressure washing system had reached the drain; the associated container of concentrated detergent in use lacked secondary containment.

35. On March 27, 2019, the Facility notified the EPA that the Facility's maintenance department had identified a valve problem with the pressure washing system find approximately four years prior, and upon repair the leak of detergent reaching the drain ceased. The detergent wash water is now being disposed through one of the new evaporator systems, and the container of concentrated detergent now has secondary containment.

36. Based on observations made during its Inspection and its subsequent review of information obtained from Respondent, the EPA has identified the following violations of pretreatment standards and requirements, as defined by 40 C.F.R. §§ 403.3(l) and 403.3(t):

- A. New Source failure to install and operate pretreatment equipment prior to discharge. Pursuant to 40 C.F.R. § 403.6(b), discharge from the Respondent to a POTW is subject to both the federal categorical pretreatment standards in 40 C.F.R. Part 433 and local pretreatment standards. Respondent is a new source, as defined in 40 C.F.R. § 403.3(m), because the standards applied to the Facility after August 31, 1982, when the EPA published proposed pretreatment standards for Part 433. Respondent was thus required to install and have in operating condition all pollution control equipment necessary to meet applicable Pretreatment Standards, including those in 40 C.F.R. Part 433, prior to beginning discharge to the POTW.

Respondent did not install all such necessary pollution control equipment prior to beginning discharge of regulated wastestreams to the POTW in 2000 and, in continuing violation of 40 C.F.R. § 403.6(b), had not installed such equipment by time it elected to cease discharge to the POTW in early August 2016 following inspection by the EPA.

- B. Failure to submit a baseline monitoring report in violation of 40 C.F.R. § 403.12(b). At least 90 days prior to commencement of discharge, a new source is required to submit to the Control Authority a report which contains the information listed in 40 C.F.R. § 403.12(b)(1)-(5), as well as information on the method of pretreatment the source intends to use to meet applicable pretreatment standards and to maintain record of the report, per 40 C.F.R. §§ 403.12(d), 403.12(g), 403.12(l) and 403.12(o).

Respondent did not submit the required baseline report to Gainesville, nor did Respondent maintain the required record demonstrating its compliance with the baseline reporting requirement.

- C. Failure to submit 90-day report in violation of 40 C.F.R. § 403.12(d). Within 90 days after commencing a discharge to a POTW, a new source is required to report to the Control Authority and maintain record of the self-monitoring information on its compliance with standards, per 40 C.F.R. §§ 403.12(d), 403.12(g), 403.12(l) and 403.12(o).

Ninety days after commencing a categorical discharge to the POTW in 2000, Respondent did not submit a report to Gainesville of its initial compliance with the pretreatment standards in 40 C.F.R. § 433.17. Respondent also did not maintain the required record demonstrating its initial compliance with these pretreatment standards.

- D. Failure to submit periodic reports on continued compliance with categorical standards in violation of 40 C.F.R. § 403.12(e). Pursuant to 40 C.F.R. §§ 403.12(e), 403.12(g), 403.12(l) and 403.12(o), any industrial user subject to categorical pretreatment standards must submit to the Control Authority, and maintain records of, additional periodic compliance reports at least twice a year on compliance with categorical standards and other information.

After commencing categorical discharge in 2000 until electing to hold discharge in early August 2016, Respondent had not submitted to Gainesville, or maintained record of, such self-monitoring reports of its compliance with 40 C.F.R. § 433.17 pretreatment standards.

III. Stipulations and Findings

37. The Complainant and the Respondent have conferred for settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

38. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations and legal conclusions set out above.

39. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

40. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

41. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, truthful, accurate, and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

42. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

43. The Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

44. Pursuant to Section 309(g)(2)(B) and (3) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (3), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that one hundred fifty thousand dollars (\$150,000) is an appropriate civil penalty to settle this action.

45. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of the Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

46. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Attn: Ms. Mary Mattox
Targeting, Data, and Measures Office
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

47. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

48. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorneys' fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

49. Full payment of the civil penalty, as provided in Section IV above, shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the civil penalty, as provided in Section IV above, shall only resolve the Respondent's liability for Federal civil penalties for the violations alleged in this CA/FO.

50. This CA/FO does not waive, extinguish, or otherwise affect the Respondent's obligation 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.

51. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

52. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

53. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

54. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

55. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service related to this proceeding:

For Complainant:

Ms. Kavita Nagrani
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9697

For Respondent:

Marel, Inc.
c/o: Ms. Kara Kezios, Counsel
8145 Flint Street
Lenexa, Kansas 66214
(913) 754-9903

56. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CA/FO based on comments received during the public comment period.

57. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Georgia was provided a prior opportunity to consult with the Complainant regarding this matter.

58. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the

Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

59. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For the RESPONDENT MAREL, INC.:



Jan Kuhlmann
President

Date: 10-30-19

**For the COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION 4:**



Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

Date: 12/20/19

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
MAREL, INC.) CONSENT AGREEMENT AND
) FINAL ORDER
GAINESVILLE, GEORGIA,)
)
RESPONDENT.) DOCKET NO. CWA-04-2019-4500(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.18(b), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/26/19

Blake Ashton,
Acting Regional Administrator, signing for

Mary S. Walker
Regional Administrator

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Marel, Inc., Docket No. CWA-04-2019-4500(b)** (filed with the Regional Hearing Clerk on Jan 8, ²⁰²⁰2019) was served on Jan 8, ²⁰²⁰2019, in the manner specified to each of the persons listed below.


By hand-delivery:

Ms. Kavita Nagrani
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Marel, Inc.
c/o: Ms. Kara Kezios, Counsel
8145 Flint Street
Lenexa, Kansas 66214

Mr. Lewis Hays
Watershed Compliance Program
Watershed Protection Branch
Georgia Environmental Protection Division
2 Martin Luther King, Jr. Dr.
Suite 1152 East
Atlanta, Georgia 30334


Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511