



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No.	CWA-05-2018-0014
)	
Americana Powder Finishing, LLC)	Proceeding to Assess a Class II Civil
2 Industrial Drive)	Penalty under Section 309(g) of the Clean
Salem, Illinois)	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" or "the Act"), 33 U.S.C. § 1319(g), and Section 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. § 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Americana Powder Finishing, LLC (Americana), a corporation in Salem, Illinois.

4. 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). See 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a

hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); its right to appellate review under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 307(b) of the Act, 33 U.S.C. § 1317(b), states “[t]he Administrator shall publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works”

10. Pursuant to 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator published “General Pretreatment Regulations for Existing and New Sources” on January 28, 1981, codified at 40 C.F.R. Part 403. By the terms of the regulation, the requirements of Part 403 became effective three years from the date of promulgation. These standards include general prohibitions, specific prohibitions and local limits.

11. Section 307(d) of the Act, 33 U.S.C. § 1317(d), states that [a]fter the effective date of any ... pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such ... pretreatment standard.”

12. Section 308(a) of the Act, 33 U.S.C. § 1318(a), provides, among other things, that whenever required to carry out the objective of this chapter, the Administrator of EPA shall require the owner or operator of any point source to: establish and maintain such records, make such reports, and provide such other information as he or she may reasonably require.

13. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), states that whenever the Administrator of EPA finds a person in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), the Administrator of EPA may issue an order requiring that person to comply with the provisions of the Act.

14. On September 30, 2015, EPA and Americana entered into an Administrative Consent Order (the Order) in which EPA set forth its determination that Americana was in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Order set forth actions to be taken by Americana to bring Americana into compliance with the CWA and its implementing regulations.

15. Section 309(g) of the Act, 33 U.S.C. § 1319(g), states that whenever, on the basis of any information available the Administrator finds that any person has violated [section 307 of the Act, 33 U.S.C. § 1317], ... the Administrator ... may, after consultation with the State in

which the violation occurs, assess a ... class II civil penalty under [section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B)].

16. The Metal Finishing Point Source Category, at 40 C.F.R. § 433.17(a), prohibits any source that began discharging wastewater after the promulgation of 40 C.F.R. § 433.17(a) from discharging wastewater with concentrations of metals in excess of the pretreatment standards for new sources (PSNS).

17. The State of Illinois has not sought authority from EPA under 40 C.F.R. § 403.10 to allow Illinois to approve pretreatment programs submitted by Publicly Owned Treatment Works (POTWs) pursuant to 40 C.F.R. § 403.8. Consequently, consistent with 40 C.F.R. § 403.3(c), EPA is the "approval authority" for POTW pretreatment programs in the State of Illinois.

18. The City of Salem POTW has not been authorized by EPA pursuant to 40 C.F.R. § 403.8 to operate its own pretreatment program. Consequently, EPA is the Control Authority for the City of Salem POTW consistent with 40 C.F.R. § 403.12(a).

19. The term "indirect discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c), or (d) of the Act.

20. The term "industrial user" (IU) means a source of indirect discharge.

21. Americana discharges wastewater to the City of Salem POTW and therefore has one or more indirect discharges.

22. Americana is therefore an IU as the term is defined in 40 C.F.R. § 403.3.

23. Respondent is a corporation and therefore a "person" under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

24. At all times relevant to this Order, Respondent owned and operated the Americana Powder Finishing, a metal finishing facility, located in Salem, Illinois ("facility").

Factual Allegations and Alleged Violations

25. On January 22, 2016, July 25, 2016, and August 30, 2017, EPA received a report submitted by Americana that identified the zinc concentration in Americana's wastewater as 1.53 mg/L, 48.8 mg/L, and 1.79 mg/L, respectively, which is above the standard of 1.48 mg/L and in violation of the CWA and its implementing regulations.

26. On July 25, 2016, EPA received a report submitted by Americana that identified the copper concentration in Americana's wastewater as 2.62 mg/L, which is above the standard of 2.07 mg/L and in violation of the CWA and its implementing regulations.

27. On February 21, 2017 Americana failed to include a Total Toxic Organic (TTO) analysis in a report and violated 40 C.F.R. § 433.12, which requires submission of a TTO analysis with each semi-annual compliance report.

28. Americana failed to notify EPA within 24 hours of obtaining knowledge that it had discharged wastewater with concentrations of zinc and copper in excess of the allowable limits and failed to perform or submit a repeat discharge analysis for reports submitted in January, 2016 and August, 2017 as required by 40 C.F.R. § 403.12(g)(2) and Attachment 1 Part II.D of the Order, and violated both 40 C.F.R. § 403.12(g)(2) and Attachment 1 Part II.D of the Order.

29. 40 C.F.R. § 403.12(e) and Attachment 1 Part III.D. Paragraph 2 of the Order require Americana to submit semi-annual reports to EPA on July 31 and January 31 of each year. Americana submitted a report to EPA on February 21, 2017, 21 days after the due date of January 31, 2017. Americana submitted a report to EPA on August 30, 2017, 30 days after the due date of July 31, 2017. These tardy submissions were in violation of 40 C.F.R. § 403.12(e) and Attachment 1 Part III.D. Paragraph 2 of the Order.

Civil Penalty

30. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$187,500 for violations of Section 301 of the Act that occurred after December 6, 2013 through November 2, 2015; and up to \$20,965 per day of violation up to a total of \$262,066 for violations of Section 301 of the Act that occurred after November 2, 2015 and assessed on or after January 15, 2017.

31. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, EPA agrees to resolve the violations alleged in this CAFO in exchange for payment by Americana of a civil penalty of \$14,784.

32. Within 30 days after the effective date of this CAFO, Respondent must pay the \$14,784 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Respondent's name and the docket number of this CAFO.

33. A transmittal letter that states Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604

Brian Lenell
Water Enforcement and Compliance Assurance Branch (WC-15J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Steven Kaiser
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice to bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

36. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorneys' fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

General Provisions

37. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: kaiser.steven@epa.gov (for Complainant) and geff@americana.com (for Respondent). *See* 40 C.F.R. §§ 22.5-6.

38. Full payment of the penalty as described in paragraphs 34 and 35 and full compliance with this CAFO 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.

39. Full payment of the penalty as described in paragraphs 34 and 35 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

40. This CAFO does not affect Respondent's responsibility to comply with the Clean Water Act and other applicable federal, state, or local laws and permits.

41. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

42. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

43. The terms of this CAFO bind the Respondent and its successors and assigns.

44. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

45. Each party agrees to bear its own costs and attorney's fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

47. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5) and 40 C.F.R. §§ 22.38, 22.45, and which shall be at least 30 days before the CAFO has been signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:

Americana Powder Finishing, LLC
Docket No. [] CWA-05-2018-0014

Americana Powder Finishing, LLC, Respondent

Gerald Purcell
Gerald Purcell
Partner
Americana Powder Finishing, LLC

7-31-2018
Date

United States Environmental Protection Agency, Complainant

Deborah C. Boetger for
Linda Holst, Acting Director
Water Division
United States Environmental Protection Agency
Region 5
Chicago, Illinois

8/13/18
Date

In the Matter of:

Americana Powder Finishing, LLC

Docket No. [] CWA-05-2018-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon 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.

By:

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Date:

In the matter of: Americana Powder Finishing, LLC
Docket Number: CWA-05-2018-0014

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on _____, this day in the following manner to the addressees:

Copy by email to: Geff Purcell
Americana Powder Finishing, LLC
2 Industrial Drive
Salem, Illinois 62881
geff@americana.com

Copy by e-mail to
Attorney for Complainant: Steven Kaiser
kaiser.steven@epa.gov

Copy by e-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5