

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CWA-05-2023-0001</b>
	)	
<b>Huntsman Advanced Materials Americas LLC</b>	)	<b>Proceeding to Assess a Class II Civil</b>
<b>725 State Road</b>	)	<b>Penalty under Section 309(g) of the Clean</b>
<b>Ashtabula, Ohio 44004</b>	)	<b>Water Act, 33 U.S.C. § 1319(g)</b>
	)	
<b>Respondent.</b>	)	

**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 Sections 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 Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Huntsman Advanced Materials Americas LLC (Huntsman), a corporation which owns a facility located at 725 State Road in Ashtabula, Ohio (the Huntsman Facility).

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 right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

**Statutory and Regulatory Background**

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters 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 conditions. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Ohio requested approval from EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by EPA on March 11, 1974, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, pursuant to the State's permit program, the Ohio Environmental Protection Agency ("OEPA") has issued OEPA NPDES permits.

12. 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 in which the violation occurs, 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, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

#### **Factual Allegations**

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

14. Respondent owned and operated the Huntsman Facility as of January 15, 2021, at which time Gabriel Performance Products LLC merged with Huntsman.

15. The Ashtabula River is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

#### **Count 1: Permit Effluent Limit Violations**

16. The statements in paragraphs 1 through 15 are hereby incorporated by reference as if set forth in full.

17. At all times relevant to this Order, Outfall No. 001 discharged biochemical oxygen demand, carbon tetrachloride, chlorine, *E.coli*, fecal coliform, mercury, pH, total suspended solids, and zinc into the Diamond Shamrock tributary. The Diamond Shamrock tributary then flows into Fields Brook, then to the Ashtabula River.

18. The pollutants biochemical oxygen demand, carbon tetrachloride, chlorine, *E.coli*, fecal coliform, mercury, pH, total suspended solids, and zinc are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. Outfall 001 is a discernible, confined and discrete conveyance and constitutes a “point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. Outfall No. 601 is an internal monitoring outfall at the Facility, discharging treated sanitary wastewater later commingled with the discharge from Outfall No. 001.

21. OEPA issued a permit OH0029149 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, to Gabriel Performance Products, effective May 1, 2019. OEPA subsequently changed the name of the owner and operator of the facility in the Permit to Huntsman Advanced Materials Americas, LLC, with a permit effective date of May 1, 2019. At all relevant times, the Permittee, Gabriel Performance Products or Huntsman Advanced Materials Americas, LLC was authorized to discharge pollutants from Outfall 001 at the Facility to navigable waters only in compliance with the specific terms and conditions of the Permit.

22. Part I.A of the Permit establishes effluent limitations and monitoring requirements at Outfall 001 for pollutants including biochemical oxygen demand, carbon tetrachloride, chlorine, *E.coli*, fecal coliform, mercury, pH, total suspended solids, and zinc.

23. Part I.A of the Permit also establishes effluent limitations and monitoring requirements at internal Outfall 601 for *E.coli*, total suspended solids, and carbonaceous biochemical oxygen demand.

24. Through Respondent’s merger with Gabriel Performance Products, the prior owner or operator of a facility with an outfall that acted as a point source for the discharge of pollutants to navigable waters, Respondent and the Facility have been subject to the CWA and

the NPDES program at all times relevant to this Order. Thus, any such discharge has been and is subject to the specific terms and conditions prescribed in the Permit.

25. Through evaluation of discharge monitoring reports (“DMRs”) submitted by the Facility to OEPA, EPA identified 44 occasions between September 1, 2017 and July 31, 2022, where the Facility discharged pollutants from Outfall 001 that exceeded the applicable effluent limits in the Permit for Outfall 001 and internal Outfall 601, in violation of Part I.A of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). (See Attachment A – Count 1, Effluent Limit Violations)

26. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

**Count 2: Monitoring Violations**

27. The statements in paragraphs 1 through 26 are hereby incorporated by reference as if set forth in full.

28. Through evaluation of DMRs submitted by the Facility to OEPA and Respondent’s investigations into methods and sources of error regarding sampling for total residual chlorine and zinc, EPA identified 33 occasions between February 28, 2018 and July 31, 2022, where the Facility reported unrepresentative sample results from Outfall 001, in violation of Part I.A of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). (See Attachment B – Count 2, Monitoring Violations).

**Count 3: Operations and Maintenance Violations**

29. The statements in paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

30. Permit Part III.3.A requires “[a]t all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit.”

31. On July 13, 2021, EPA inspected the Facility to evaluate compliance with the CWA and the Permit. During the inspection, EPA inspectors observed evidence of failures to maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit, including:

- Lack of aeration in the sanitary sewage package plant;
- Plant growth on top of the sanitary sewage package plant sand bed;
- Unknown residue (perhaps deteriorating vault material) and the use of chlorine tablets for disinfection in the sanitary sewage package plant. Chlorine tablets appeared to break apart in the tablet holders, potentially creating solids in the effluent; and
- Outfall 001 Treatment System multimedia beds were operated with the wrong type of filter media prior to August 2020.

32. Such operation constitutes a violation of CWA Section 301, 33 U.S.C. § 1311.

#### **Civil Penalty**

33. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$23,989 per day of violation up to a total of \$299,857, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after January 12, 2022, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

34. 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 ability to pay, 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, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$180,000. This recognizes the nature, extent and gravity of the violations alleged as well as Respondent's cooperation and good faith efforts and work to respond quickly and address the deficiencies alleged in this CAFO.

35. Within 30 days after the effective date of this CAFO, Respondent must pay the \$180,000 civil penalty by either:

For checks sent by regular U.S. Postal Service mail, 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

Or for on-line payment, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

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

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Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (E-19J)  
Chicago, Illinois 60604-3590

Dean Maraldo (ECW-15J)  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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

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

38. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice 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.

39. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorney's 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).

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#### **General Provisions**

40. The parties consent to service of this CAFO by email at the following valid email addresses: carlson.deboraha@epa.gov (for Complainant) and allen.kacenjara@squirepb.com (for



Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

41. Full payment of the penalty as described in paragraphs 35 and 36 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

42. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 35 and 36 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

43. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

44. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

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

46. Each person signing this CAFO 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.

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

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

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49. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable

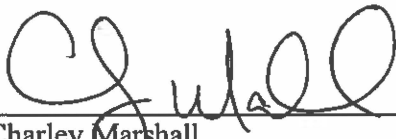
opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

50. When final and effective, this CAFO is a “final order” for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA’s Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

51. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

**In the Matter of:**  
**Huntsman Advanced Materials Americas LLC**  
**Docket No. CWA-05-2023-0001**

**Huntsman Advanced Materials Americas LLC, Respondent**

  
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Charley Marshall  
Regional Manufacturing Director/Midwest  
Huntsman Advanced Materials Americas LLC

2/06/2023  
Date

**United States Environmental Protection Agency, Complainant**

MICHAEL  
HARRIS

 Digitally signed by MICHAEL  
HARRIS  
Date: 2023.02.16 14:05:10  
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\_\_\_\_\_  
Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 5

\_\_\_\_\_  
Date

**In the Matter of:  
Huntsman Advanced Materials Americas LLC  
Docket No. CWA-05-2023-0001**

**Final Order**

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5