

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No. CWA-05-2021-0004**
)
Globe Metallurgical, Inc.) **Proceeding to Assess a Class II Civil**
) **Penalty under Section 309(g) of the Clean**
Respondent.) **Water Act, 33 U.S.C. § 1319(g)**
)
)
_____)

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 Globe Metallurgical, Inc. (“Respondent”), a corporation doing business in Beverly, Ohio.

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 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 ("Ohio EPA") has issued Ohio EPA NPDES permits.

12. Section 502(12) of the CWA defines "discharge of a pollutant," as, *inter alia*, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

13. Section 502(6) of the CWA defines "pollutant," as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

14. Section 502(14) of the CWA defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

15. Section 502(7) of the CWA defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

16. EPA defined the term "water of the United States" at 40 C.F.R. Part 122.

17. Section 502(5) of the CWA defines a "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5).

18. 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 includes discharges not in compliance with a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Allegations and Alleged Violations

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

20. At all times relevant to this CAFO, Respondent owned and/or operated the Globe Metallurgical Inc. Beverly Plant, a ferroalloy production plant, located in Beverly, Ohio (“Facility”).

21. At all times relevant to this CAFO, Respondent owned and/or operated a landfill located adjacent to the Facility.

22. Pursuant to its approved NPDES program, the Ohio Environmental Protection Agency issued NPDES Permit No. OH0007498 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, to Respondent for the Facility. The Permit became effective on September 11, 2017 and expires on September 30, 2022. At all times relevant to this CAFO, Respondent was authorized under the Permit to discharge pollutants only from certain Outfalls identified in the Permit and only in compliance with the specific terms and conditions of the Permit.

23. As relevant to this matter, the Permit allows Respondent to discharge pollutants through Outfalls referred to as Outfalls 001, 002 and 601.

24. Part II.B. of the Permit describes the location of each Outfall identified in the Permit.

25. Outfalls 001, 002 and 601 are each a “point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. Part I.A. of the Permit contains “Effluent Limitations and Monitoring Requirements” that place certain limitations on the quality and quantity of effluent discharged by Respondent and that require Respondent to sample and test its effluent and monitor its compliance with Permit conditions.

27. Part III.4. of the Permit requires Respondent to file certified Discharge Monitoring Reports (“DMRs”) of the results of required monitoring with Ohio EPA.

28. The Muskingum River has been determined by the Huntington District of the United States Corps of Engineers to be a navigable water from its mouth at Marietta, OH to mile post 112.5. Outfalls identified in the Permit as Outfalls 001 and 601 discharge to this section of the Muskingum River.

29. The Outfall identified in the Permit as Outfall 002 discharges to an unnamed tributary which flows southwest 0.3 kilometer to Hayward Run. Hayward Run is a perennial stream that flows south and southeast for approximately four kilometers to the Muskingum River, which is a Section 10 stream at the point where Hayward Run enters the Muskingum River.

30. As described in Counts I-III below, Globe discharged effluent containing pollutants through Outfalls 001, 002 and 601.

31. The additions of pollutants through Outfalls 001, 002 and 601 to the unnamed tributary, Hayward Run, and the Muskingum River are each a “discharge of a pollutant” as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

32. The unnamed tributary to Hayward Run, Hayward Run, and the Muskingum River are each navigable waters as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “waters of the United States” as defined at 40 C.F.R. § 122.2.

Count I: Unlawful Discharge of Pollutants through Outfall 001

33. Paragraphs 1-32 of this Complaint are incorporated by reference as if fully set forth herein.

34. Parts I.A.1. and II.B. of the Permit authorize Respondent to discharge through Outfall 001 into the Muskingum River in accordance with limitations contained in that Part.

35. Respondent discharges Non-Contact Cooling Water, stormwater runoff, dust suppression runoff, and treated sanitary wastewater through Outfall 001.

36. The effluent which Respondent discharges at Outfall 001 includes materials referred to as chlorine and total suspended solids (“TSS”).

37. Chlorine and TSS are each a “pollutant” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

38. For effluent discharged from Outfall 001, Part I.A.1. of the Permit provides a maximum concentration limit of .038 milligrams per liter (“mg/l”) for total residual chlorine.

39. For effluent discharged from Outfall 001, Part 1.A.1. of the Permit provides a maximum concentration limit of 45 mg/l for TSS.

40. For effluent discharged from Outfall 001, Part 1.A.1. of the Permit provides a maximum monthly concentration limit of 30 mg/l for TSS.

41. For effluent discharged from Outfall 001, Part 1A.1. of the Permit provides a maximum daily loading limit of 5.8 kilograms per day (“kg/day”) for TSS.

42. For effluent discharged from Outfall 001, Part 1.A.1. of the Permit provides a maximum monthly loading limit of 3.9 kg/day for TSS.

43. In accordance with Part III.4. of the Permit, Respondent filed DMRs with Ohio EPA covering discharges for the time period of August 2018, November 2018, March 2019, May 2019 and October 2019.

44. In the DMR for August 2018, Respondent indicated that the monthly TSS concentration in the effluent discharged through Outfall 001 in August 2018 was 44 mg/l and that the monthly TSS loading in the effluent discharged through Outfall 001 in August 2018 was 4.8 mg/day.

45. In the DMR for November 2018, Respondent indicated that the TSS concentration in the effluent discharged through Outfall 001 in November 2018 was 88.5 mg/l, the monthly TSS concentration in the effluent discharged through Outfall 001 in November 2018 was 44.3 mg/l, the TSS daily loading in the effluent discharged through Outfall 001 in November 2018 was 19.4 kg/day, and the TSS monthly loading in the effluent discharged through Outfall 001 in November 2018 was 3.9 kg/day.

46. In the DMR for March 2019, Respondent indicated that the TSS concentration in the effluent discharged through Outfall 001 in March 2019 was 80 mg/l, the monthly TSS concentration in the effluent discharged through Outfall 001 in March 2019 was 40 mg/l and the daily TSS loading in the effluent discharged through Outfall 001 in March 2019 was 7 kg/day.

47. In the DMR for May 2019, Respondent indicated that the total residual chlorine concentration in the effluent discharged through Outfall 001 in May 2019 was .19 mg/l.

48. In the DMR for October 2019, Respondent indicated that the total residual chlorine concentration in the effluent discharged through Outfall 001 in October 2019 was .06 mg/l.

49. By discharging pollutants from Outfall 001 in excess of limits provided the Permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, for August and November 2018 and for March, May and October 2019.

Count II: Unlawful Discharge of Pollutants through Outfall 002

50. Paragraphs 1-32 of this Complaint are incorporated by reference as if fully set forth herein.

51. Parts I.A.2. and II.B. of the Permit authorize Respondent to discharge through Outfall 002 into an unnamed tributary of Hayward Run in accordance with limitations contained in that Part.

52. Respondent manages a closed landfill south of the Facility. Stormwater runoff from the closed landfill is captured in a pond. Stormwater from the pond flows into Outfall 002, a metal pipe located at the southwest corner of the pond. Stormwater exits Outfall 002 by flowing into an unnamed tributary of Hayward Run.

53. The stormwater which Respondent discharges through Outfall 002 includes, among other materials, TSS.

54. TSS is a “pollutant” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

55. For the effluent discharged from Outfall 002, Part I.A.2 of the Permit provides a monthly concentration limit of 30 mg/l for the concentration of TSS.

56. In accordance with Part III.4. of the Permit, Respondent filed a DMR with Ohio EPA covering discharges for the time period of June 2019.

57. In the DMR for June 2019, Respondent indicated that the monthly TSS concentration in the effluent discharged through Outfall 002 in June 2019 was 84.5 mg/l.

58. By discharging a pollutant from Outfall 002 in excess of a limit provided in the Permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. §1311(a), in June 2019.

Count III: Unlawful Discharge of Pollutants through Outfall 601

59. Paragraphs 1-32 of this Complaint are incorporated by reference as if fully set forth herein.

60. Parts I.A.3. and II.B. of the Permit authorizes Respondent to discharge sanitary wastewater from the WWTP after chlorination through Outfall 601 but prior to combining with other wastewater in accordance with limitations contained in that Part.

61. Wastewater produced at the Facility is treated in an on-site Sanitary Treatment Plant. As part of the treatment, the sanitary wastewater is chlorinated for disinfection in a chamber. This chamber is Outfall 601 and the sampling for Outfall 601 occurs at that point. After the treated sanitary wastewater flows through Outfall 601, it comeslingles with stormwater and cooling tower blowdown, and the combined wastes then flow to the outfall catch basin and then discharge through Outfall 001 to the Muskingum River.

62. The wastewater which discharges through Outfall 601 includes TSS and impacts the Carbonaceous Biochemical Oxygen Demand in the water during a 5-day period (“CBOD₅”).

63. TSS and CBOD₅ are each a “pollutant” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

64. For the effluent discharged from Outfall 601, Part I.A.3 of the Permit provides a monthly maximum concentration limit of 30 mg/l for TSS.

65. For the effluent discharged from Outfall 601, Part I.A.3. of the Permit provides a monthly maximum concentration limit of 25 mg/l for CBOD₅.

66. In accordance with Part III.4 of the Permit, Respondent filed DMRs with Ohio EPA covering discharges for the time periods of May 2018 and January 2019.

67. In the DMR for May 2018, Respondent indicated that the monthly CBOD₅ concentration in the effluent discharged through Outfall 601 in May 2018 was 29.3 mg/l

68. In the DMR for June 2019, Respondent indicated that the monthly TSS concentration in the effluent discharged through Outfall 601 in January 2019 was 35.5 mg/l.

69. By discharging pollutants from Outfall 601 in excess of limits provided in the Permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, in May 2018 and June 2019.

Civil Penalty

70. 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 of up to \$22,320 per day of violation up to a total of \$278,995, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after January 13, 2020, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

71. 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 \$55,300.

72. Within 30 days after the effective date of this CAFO, Respondent must pay the \$55,300 civil penalty by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

73. At the time Respondent makes the ACH electronic funds transfer required by Paragraph 72, Respondent shall notify the following persons in writing, stating Respondent’s name, complete address and the case docket number, and providing a screen shot, pdf or other proof of the ACH electronic funds transfer:

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

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

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

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

75. 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.

76. 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).

General Provisions

77. The parties consent to service of this CAFO by email at the following valid email addresses: Mikalian.charles@epa.gov (for Complainant) and FLyons@schiffhardin.com (for Respondent).

78. Full payment of the penalty as described in paragraphs 71 and 72 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.

79. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 71 and 72 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.

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

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

82. 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).

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

84. 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.

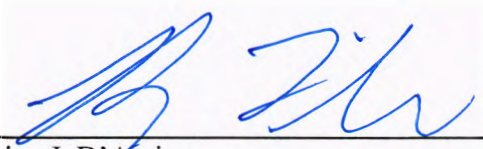
85. Each party agrees to bear its own costs and attorney's fees in this action.

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

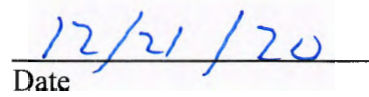
87. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5) and 40 C.F.R. §§ 22.38, 22.45, and which shall be at least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

In the Matter of:
Globe Metallurgical, Inc.
Docket No. **CWA-05-2021-0004**

Globe Metallurgical Inc., Respondent



Brian J. D'Amico
Vice President and Secretary
Globe Metallurgical Inc.



Date

In the Matter of:
Globe Metallurgical, Inc.
Docket No. CWA-05-2021-0004

United States Environmental Protection Agency, Complainant

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MICHAEL HARRIS
HARRIS Date: 2021.01.21
12:47:15 -06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

In the Matter of:
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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: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5