

FILED

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**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No. CWA-05-2024-0004**
)
AAR Manufacturing, Inc. (d/b/a) **Proceeding to Assess a Class II Civil**
AAR Mobility Systems)) **Penalty under Section 309(g) of the Clean**
Cadillac, Michigan,) **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 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 AAR Manufacturing, Inc. (d/b/a AAR Mobility Systems) (referred to herein as “Respondent”), a corporation in Cadillac, Michigan.

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 and conclusions of law 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*, in compliance with Section 307 of the CWA, 33 U.S.C. § 1317 and in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 307(b)(1) of the CWA, 33 U.S.C. § 1317(b)(1), states that the Administrator shall publish proposed regulations establishing pretreatment standards for introduction of pollutants into Publicly Owned Treatment Works (“POTWs”) for those pollutants that are determined not to be susceptible to treatment by such treatment works, or that would interfere with the operation of such treatment works.

11. Pursuant to Section 307(b) of the CWA, 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), which became effective three years from the date of promulgation.

12. 40 C.F.R. § 403.5 provides that the following pollutants shall not be introduced into a POTW: pollutants which cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges.

13. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), states that, after 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 the source in violation of any such pretreatment standard.

14. 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).

15. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Michigan requested approval from EPA to administer its own permit program for discharges into navigable waters within Michigan, and such approval was granted by EPA on October 17, 1973, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, the State of Michigan has issued NPDES permits.

16. 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, or when the Administrator finds that any person has violated Section 307, 33 U.S.C. § 1317.

General Allegations

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

18. At all times relevant to this Order, Respondent owned and operated the AAR Mobility Systems Facility, a manufacturing facility, located in Cadillac, Michigan (“facility”).

19. The City of Cadillac, Michigan owns and operates a Publicly Owned Treatment Works (“POTW”), as defined at 40 C.F.R. § 403.3(q). Cadillac’s POTW includes a wastewater collection system that receives wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent’s facility.

20. The POTW is not specifically designed to accommodate discharges with pH below 5.0.

21. The Clam River and Lake Cadillac are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Count 1: Unlawful Discharge of Pollutants into the Clam River

22. The statements in paragraphs 1 through 21 are hereby incorporated by reference as if set forth in full.

23. At all times relevant to this Order, Outfall No. 001A discharged into the Clam River, which flows into Lake Cadillac.

24. Respondent was issued a permit MI0002640 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, by the State of Michigan. The Permit places the following limits on

Respondent's discharges: 1) a daily maximum limit for temperature of 90 degrees Fahrenheit, and 2) a daily maximum limit for total residual chlorine of 38 micrograms/Liter.

25. The total residual chlorine and heat discharged into the Clam River is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

26. 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).

27. Respondent's addition of heat and total residual chlorine as documented in Table A from Outfall 001 into the Clam River constitutes a "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

28. Because Respondent owned and operated 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 CWA and its implementing regulations and the specific terms and conditions prescribed in the applicable permit.

29. 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.

30. Each day the pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2: Unlawful Discharge into POTW

31. The statements in paragraphs 1 through 21 are hereby incorporated by reference as if set forth in full.

32. Respondent cleans and treats aluminum and reinforced fiberglass sheets and discharges wastewater from a treatment tank and rinse tanks to the POTW. Respondent is therefore an “Industrial User” as defined at 40 C.F.R. § 403.3(j).

33. Respondent discharged wastewater to the City of Cadillac POTW with a pH lower than 5.0. See Table B.

34. Respondent’s discharges of wastewater with a pH level below 5.0 are violations of 40 C.F.R. § 403.5, and as such, are violations of Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317.

Civil Penalty

35. 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 \$25,847 per day of violation up to a total of \$323,081, 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.

36. 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 \$220,000.

37. Within 30 days after the effective date of this CAFO, Respondent must pay the \$220,000 civil penalty by an on-line payment. To pay on-line, go to 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.

38. Within 5 days of payment, Respondents must provide proof of payment via email

to:

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5HearingClerk@epa.gov

William Jones
Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
jones.william@epa.gov

Mark Koller (C-14J)
Associate Regional Counsel
Office of Regional Counsel
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39. This civil penalty is not deductible for federal tax purposes.

40. 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.

41. 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' 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

42. The parties consent to service of this CAFO by email at the following valid email addresses: koller.mark@epa.gov (for Complainant) and dan.deeb@afslaw.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

43. Full payment of the penalty as described in paragraphs 36 and 37 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.

44. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 36 and 37 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.

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

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

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

48. 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.

49. Each party agrees to bear its own costs and attorneys fees in this action.

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


51. 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.

52. 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).


53. 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:
AAR Manufacturing, Inc. (d/b/a AAR Mobility Systems)
Docket No. CWA-05-2024-0004

AAR Manufacturing, Inc. (d/b/a AAR Mobility Systems), Respondent




Lee Krantz
Vice President
AAR Manufacturing, Inc.



Date

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

 Digitally signed by
MICHAEL HARRIS
Date: 2023.10.06 14:41:48
-05'00'

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

Date

In the Matter of:
AAR Manufacturing, Inc. (d/b/a AAR Mobility Systems)
Docket No. CWA-06-2024-0004

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

Table A

Effluent Limit Exceedances Table

MI0002640: AAR MOBILITY SYSTEMS, CADILLAC, MI 49601

Monitoring Period Date Range: 11/01/2016 to 09/30/2021

Summary: 17 Total Chlorine Exceedances and 8 Temperature exceedances (all daily max exceedances)

Exceedance Details

Monitoring Period Date	Outfall	Parameter Code	Parameter Description	Average Daily Flow Limit (MGD)	Limit Type	DMR Value	DMR Unit	Limit Value	Limit Unit	% Exceedance	Load Over Limit (lb/period)	TWPE Over Limit	Number of Days	Days with Exceedances
1/31/2017	1	50060	Chlorine, t	0.164	DAILY MX	0.12	mg/L	0.038	mg/L	216	3.479315981	1.739658	31	1
7/31/2017	1	50060	Chlorine, t	0.244	DAILY MX	0.14	mg/L	0.038	mg/L	268	6.439114823	3.219557	31	1
10/31/2017	1	50060	Chlorine, t	0.225	DAILY MX	0.042	mg/L	0.038	mg/L	11	0.232851308	0.116426	31	1
11/30/2017	1	11	Temperature, water d		DAILY MX	102.2	deg F	90	deg F	14			30	1
7/31/2018	1	11	Temperature, water d		DAILY MX	92.3	deg F	90	deg F	3			31	1
8/31/2018	1	11	Temperature, water d		DAILY MX	107.6	deg F	90	deg F	20			31	1
1/31/2019	1	50060	Chlorine, t	0.226	DAILY MX	0.059	mg/L	0.038	mg/L	55	1.227902562	0.613951	31	1
2/28/2019	1	11	Temperature, water d		DAILY MX	91.9	deg F	90	deg F	2			28	1
2/28/2019	1	50060	Chlorine, t	0.216	DAILY MX	0.089	mg/L	0.038	mg/L	134	2.574283874	1.287142	28	1
3/31/2019	1	50060	Chlorine, t	0.222	DAILY MX	0.042	mg/L	0.038	mg/L	11	0.229746623	0.114873	31	1
5/31/2019	1	11	Temperature, water d		DAILY MX	93.7	deg F	90	deg F	4			31	1
6/30/2019	1	11	Temperature, water d		DAILY MX	95	deg F	90	deg F	6			30	1
6/30/2019	1	50060	Chlorine, t	0.198	DAILY MX	0.1	mg/L	0.038	mg/L	163	3.073637259	1.536819	30	1
7/31/2019	1	11	Temperature, water d		DAILY MX	92.5	deg F	90	deg F	3			31	1
7/31/2019	1	50060	Chlorine, t	0.185	DAILY MX	0.14	mg/L	0.038	mg/L	268	4.882115747	2.441058	31	1
8/31/2019	1	50060	Chlorine, t	0.161	DAILY MX	0.097	mg/L	0.038	mg/L	155	2.457616189	1.228808	31	1
9/30/2019	1	50060	Chlorine, t	0.155	DAILY MX	0.13	mg/L	0.038	mg/L	242	3.570386715	1.785193	30	1
11/30/2019	1	50060	Chlorine, t	0.19	DAILY MX	0.048	mg/L	0.038	mg/L	26	0.475717725	0.237859	30	1
3/31/2020	1	50060	Chlorine, t	0.185	DAILY MX	0.044	mg/L	0.038	mg/L	16	0.287183279	0.143592	31	1
5/31/2020	1	50060	Chlorine, t	0.206	DAILY MX	0.055	mg/L	0.038	mg/L	45	0.90605031	0.453025	31	1
8/31/2020	1	11	Temperature, water d		DAILY MX	90.9	deg F	90	deg F	1			31	1
10/31/2020	1	50060	Chlorine, t	0.222	DAILY MX	0.052	mg/L	0.038	mg/L	37	0.804113182	0.402057	31	1
12/31/2020	1	50060	Chlorine, t	0.159	DAILY MX	0.15	mg/L	0.038	mg/L	295	4.607351204	2.303676	31	1
1/31/2021	1	50060	Chlorine, t	0.159	DAILY MX	0.065	mg/L	0.038	mg/L	71	1.110700737	0.55535	31	1
2/28/2021	1	50060	Chlorine, t	0.162	DAILY MX	0.06	mg/L	0.038	mg/L	58	0.832856548	0.416428	28	1

Table B

Table 1. "Rinse Tank" Manhole Monitoring Data

Parameter Description	Time period	CFR	Limit	DMR Value	Monitoring Period End Date	Number of exceedances
pH		40 CFR 403.5(b)	5.0 S.U.	3.9	7/18/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.7	7/24/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.7	8/1/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.1	9/11/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.2	9/18/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.5	10/24/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.0	11/27/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.3	12/4/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.3	12/18/2018	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.6	1/22/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.9	2/14/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.2	2/22/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.8	2/26/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.2	3/7/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.2	3/13/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.0	3/20/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.2	3/26/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.6	4/4/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.1	4/17/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.5	4/24/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.4	5/2/2019	1

pH		40 CFR 403.5(b)	5.0 S.U.	4.4	5/7/2019	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.0	5/14/2019	1

Parameter Description	Time Period	CFR	Limit	DMR Value	Monitoring Period End Date	Number of Exceedances
pH		40 CFR 403.5(b)	5.0 S.U.	3.2	1/14/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.5	2/14/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	2.3	4/27/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.6	5/12/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.9	5/17/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	2.9	7/2/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.3	10/8/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.0	11/10/2020	1
pH		40 CFR 403.5(b)	5.0 S.U.	2.9	1/20/2021	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.6	1/27/2021	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.9	2/2/2021	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.2	5/4/2021	1

Parameter Description	Time Period	CFR	Limit	DMR Value	Monitoring Period End Date	Number of Days with an Exceedance
pH		40 CFR 403.5(b)	5.0 S.U.	3.9	8/17/2021	1
pH		40 CFR 403.5(b)	5.0 S.U.	4.4	10/27/2021	1
pH		40 CFR 403.5(b)	5.0 S.U.	3.1	11/16/2021	1
pH		40 CFR 403.5(b)	5.0 S.U.	2.7	12/9/2021	1