



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

May 11, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

And VIA E-MAIL TO: raikin@southco.com

May 11, 2023 @ 5:00 pm
USEPA – Region II
Regional Hearing Clerk

Ronald W. Aikin
EHS and Maintenance Manager
Southco, Inc.
250 East Street
Honeoye Falls, NY 14472

Re: Notice of Proposed Assessment of a Civil Penalty
In the Matter of: Southco, Inc.
Docket No. CWA-02-2023-3310

Dear Mr. Aikin:

Enclosed is an Administrative Complaint (“Complaint”) which the U.S. Environmental Protection Agency (“EPA”) is issuing to you as a result of our determination that Southco, Inc., located at 250 East Street, Honeoye Falls, New York, has failed to comply with the General Pretreatment Regulations, in violation of Section 308 of the Clean Water Act (“Act”), 33 U.S.C. § 1318. This Complaint is filed pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of \$10,000 be assessed against Southco, Inc for this violation.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed is a copy of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor (Room 1631)
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty

may be assessed without further proceedings. Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the Proposed CROP, including Subpart I thereof.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Evans Stamataky, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3201

Offer of Settlement

In an effort to promptly settle this matter, we are enclosing, for your consideration, a proposed Consent Agreement and Final Order ("CA/FO"). If, at the close of the public comment period on the Complaint, no adverse public comments are received and no information contrary to the information set forth in the Complaint comes to our attention in any other fashion, we would be prepared to enter into a CA/FO on the terms enclosed. Under the terms of the CA/FO you would be obligated to pay a penalty of **\$2,000** in accordance with the terms of the CA/FO. **If you wish to resolve this matter without further proceedings, please sign the enclosed CA/FO and return it to EPA within twenty-five (25) calendar days of your receipt of this letter. Do not submit payment to EPA until after you receive an executed CA/FO.** If we do not receive the CA/FO, signed by you or your authorized representative, within this twenty-five (25) day period, our offer of settlement is withdrawn and we will thereafter seek the full amount of the penalty proposed in the Complaint.

If you have any questions on the enclosed Consent Agreement and Final Order, please contact Evans Stamataky. We urge your prompt attention to this matter.

Sincerely,

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Proposed Consent Agreement and Final Order

cc: Karen Maples, Regional Hearing Clerk
Director, Bureau of Water Compliance programs, NYSDEC

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866**

**May 11, 2023 @ 5:00 pm
USEPA – Region II
Regional Hearing Clerk**

IN THE MATTER OF:

Southco, Inc.
250 East Street
Honeoye Falls, NY 14472

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**Administrative Complaint
Findings of Violation, Notice of Proposed
Assessment of a Civil Penalty, and Notice of
Opportunity to Request a Hearing**

**Proceeding to Assess Class I
Civil Penalty**

Docket No. CWA-02-2023-3310

I. PRELIMINARY STATEMENT

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and 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” (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Southco, Inc. (“Respondent”) for violations of federal pretreatment standards reporting requirements established pursuant to Section 308 of the Act, and enforceable pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).

II. APPLICABLE LEGAL REQUIREMENTS

1. Sections 307(b), 402(a), and 402(b)(8) of the Clean Water Act, 33 U.S.C. §§ 1317(b), 1342(a), and 1342(b)(8), establish the National Pretreatment Program to regulate discharges from industries to Publicly Owned Treatment Works (“POTW”) as a component of the National Pollutant Discharge and Elimination System Permitting Program. The National Pretreatment Program requires non-domestic dischargers to treat or control pollutants in their wastewater before discharging it to a POTW.

2. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires the Administrator to propose, publish, and revise, when needed, regulations establishing Federal standards of performance (“Pretreatment Standards”). Pursuant to Section 307(b)(3) of the Act, 33 U.S.C. § 1317(b)(3), when proposing or promulgating any Pretreatment Standard, the Administrator must designate the category or categories of sources to which such standard shall apply; these are commonly referred to as “Categorical Pretreatment Standards.”
3. In accordance with Section 307(b)(1) of the Act, 33 U.S.C. § 1317(b)(1), all Pretreatment Standards shall specify a time for compliance not to exceed three (3) years from the date of promulgation.
4. Section 307(d) of the Act, 33 U.S.C. § 1317(d), makes it unlawful for the owner or operator of any facility which introduces pollutants into a treatment works to operate such a facility in violation of, inter alia, any applicable Pretreatment Standards, including Categorical Pretreatment Standards which are promulgated by the Administrator of EPA.
5. In 1981, EPA promulgated the General Pretreatment Regulations at 40 C.F.R. Part 403 (“Part 403” or the “General Pretreatment Regulations”), 46 Fed. Reg. 9404 (Jan. 28, 1981), and amended Part 403 in 1983 and 1995, 48 Fed. Reg. 2776 (Jan. 21, 1983) and 60 Fed. Reg. 33931 (Jun. 29, 1995), respectively. Part 403 implements Sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405 and 501(a) of the Act. *See* 40 C.F.R. § 403.1(a).
6. Pursuant to 40 C.F.R. § 403.1(b)(4), the General Pretreatment Regulations apply to, among other things, any New or Existing Source subject to Pretreatment Standards promulgated under Section 307 of the Act, 33 U.S.C. § 1317.
7. In accordance with Section 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator promulgated Pretreatment Standards for the Metal Finishing Point Source Category (“MF Pretreatment Standards”), set forth at 40 C.F.R. Part 433. This part applies to any metal finishing manufacturing facility that discharges pollutants to waters of the United States or that introduces pollutants to a publicly owned treatment works.
8. The MF Pretreatment Standards, at 40 C.F.R. § 433.15, which contain Pretreatment Standards for process wastewater discharged into POTWs for Existing Sources, became effective on August 29, 1983.
9. “Owner or operator,” as defined in Section 306(a)(4) of the Act, 33 U.S.C. § 1316(a)(4), means any person who owns, leases, operates, controls, or supervises a source.
10. “Person,” as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5), means, among other things, a corporation.
11. “Source,” as defined in Section 306(a)(3) of the Act, 33 U.S.C. § 1316, and used in Section 307 of the Act, 33 U.S.C. § 1317, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

12. “New Source,” as defined in 40 C.F.R. § 403.3 (m)(1), means “any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section.” Additional criteria are set forth at 40 C.F.R. §§ 403.3 (m)(1) and (m)(2).
13. “Existing Source,” as defined in 40 C.F.R. §§ 403.3(m)(1)(ii) and (iii), means any building, structure, facility, or installation from which there is or may be a “discharge” of “pollutants,” the construction of which began before the “new source date.”
14. “Pollutant,” as defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6), means 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.
15. “Control Authority,” as defined in 40 C.F.R. §§ 403.3(c) and (f), means either the EPA Regional Administrator, a State with a pretreatment program approved pursuant to 40 C.F.R. § 403.10, or a POTW with a pretreatment program approved pursuant to 40 C.F.R. § 403.9.
16. “Treatment works,” as defined in Section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A), means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature”
17. “POTW,” as defined in 40 C.F.R. § 403.3(q), means a treatment works that is owned by a State or municipality.
18. “Indirect Discharge,” or “Discharge,” as defined in 40 C.F.R. § 403.3(i), means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.
19. “Industrial User” (“IU”), or “User,” as defined in 40 C.F.R. § 403.3(j), means a source of an Indirect Discharge.
20. Pursuant to 40 C.F.R. § 403.6(b), within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.
21. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, the Administrator may require the owner or operator of an IU to install, use, and monitor equipment, maintain records, make reports, sample effluents, and provide other information as may reasonably be required to carry out, among other things, the objectives of the Act, including Sections 308 and 402 of the Act, 33 U.S.C. §§ 1318 and 1342.
22. Under the authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and in order to implement Section 307 of the Act, 33 U.S.C. § 1317, the Administrator of EPA promulgated 40 C.F.R. §§ 403.12(b), (d), and (e), which require an IU subject to a Categorical Pretreatment Standard to

submit to the Control Authority a Baseline Monitoring Report (“BMR”) (40 C.F.R. § 403.12(b)), a Report on Compliance with Categorical Pretreatment Standard Deadline (40 C.F.R. § 403.12(d)), and Periodic Reports on Continued Compliance (“Periodic Reports”) (40 C.F.R. § 403.12(e)).

23. 40 C.F.R. § 403.12(b) requires that the BMR submitted by an IU to the Control Authority shall include, among other information, flow measurement and measurement of pollutants sent to the POTW. Specifically, 40 C.F.R. § 403.12(b)(4) requires IUs to report both average daily and maximum daily flow, and 40 C.F.R. § 403.12(b)(5) requires IUs to report both daily maximum and average concentrations (or mass), of regulated pollutants in the discharge from each regulated process.
24. 40 C.F.R. § 403.12(e) requires an IU subject to a Categorical Pretreatment Standard to submit to the Control Authority Periodic Reports during the months of June and December of each year. The Periodic Reports must, among other things, indicate the nature and concentration of those pollutants in the effluent that are subject to the applicable Categorical Pretreatment Standards.
25. 40 C.F.R. § 403.12(g)(2) requires that if sampling performed by an IU indicates a violation, the IU shall notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. 40 C.F.R. § 403.12(g)(2) further requires that the IU repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty (30) days after becoming aware of the violation.
26. Pursuant to Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), whenever, on the basis of any information available, the EPA Administrator finds that any person is in violation of, inter alia, Section 307 of the Act, the Administrator shall issue an order requiring such person to comply with such section.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW/FINDINGS OF VIOLATION

1. Neither the State of New York nor the Village of Honeoye Falls, New York has an Approved Pretreatment Program. Therefore, pursuant to 40 C.F.R. §§ 403.3(c) and (f), the EPA Regional Administrator is the Control Authority.
2. Southco, Inc. (“Respondent”), is a corporation incorporated under the laws of the State of New York, and is, therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. Respondent owns and/or operates a facility located at 250 East Street, Honeoye Falls, NY 14472 (“Facility”), where it performs, among other things, metal finishing operations.
4. The Facility generates process wastewater from its metal finishing operations. This process wastewater is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6),
5. The Facility discharges process wastewater and is a source within the meaning of Section 306(a)(3) of the Act, 33 U.S.C. § 1316, and use in Section 307 of the Act, 33 U.S.C. § 1317.

6. As a non-domestic source of pollution regulated under Section 307 of the Act, the Facility is required to comply with the requirements and standards promulgated by the EPA pursuant to Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318, including the General Pretreatment Regulations found at 40 C.F.R. Part 403.
7. The Facility introduces the process wastewater from its manufacturing processes into the Village of Honeoye Wastewater Treatment Plant.
8. The Village of Honeoye Wastewater Treatment Plant receiving this pollutant is publicly owned, and therefore qualifies as a POTW, under Section 212(2)(a) of the Act, 33 U.S.C. § 1292(2)(a) (hereinafter referred to as “the POTW”).
9. For the relevant time of this Order, the Facility has been subject to the MF Pretreatment Standards as a New or Existing Source.
10. The Facility is an "IU" within the meaning of 40 C.F.R. § 403.3(j). The Facility is subject to the General Pretreatment Regulations since it is a New or Existing Source regulated under Section 307(b) of the Act, 33 U.S.C. § 1317, which discharges into a POTW.
11. The Facility is subject to 40 C.F.R. § 403.12(e) and was required to submit Periodic Reports on Continued Compliance to EPA by June 30 and December 31 each year following submission of the BMR.
12. On September 17, 2008, Respondent was issued an Administrative Compliance Order, Docket No. CWA-02-2008-3040 (“2008 Order”), for failure to meet the zinc monthly average and maximum daily metal finishing limit for a sample collected on June 13, 2008. The 2008 Order stated that “Respondent shall notify EPA within twenty-four (24) hours of becoming aware of the violation, shall repeat the sampling and analysis and submit the results of the repeat analysis to EPA within thirty (30) days after becoming aware of the violation; and shall ensure continued compliance with the requirements of the pretreatment regulations.”
13. On September 30, 2008, Respondent signed an acknowledgment of receipt of the 2008 Order.
14. On February 9, 2009, Respondent was issued an Administrative Compliance Order, Docket No. CWA-02-2009-3048 (“2009 Order”), for failure to meet the zinc monthly average metal finishing limit for a sample collected on November 25, 2008, for failure to notify EPA within twenty-four (24) hours of becoming aware of the violation, and for failure to repeat the sampling and analysis and submit the results of the repeat analysis to EPA within thirty (30) days after becoming aware of the violation. The 2009 Order stated that “Respondent shall notify EPA within twenty-four (24) hours of becoming aware of the violation, shall repeat the sampling and analysis and submit the results of the repeat analysis to EPA within thirty (30) days after becoming aware of the violation; and shall ensure continued compliance with the requirements of the pretreatment regulations.”
15. On March 26, 2009, Respondent signed an acknowledgment of receipt of the 2009 Order.

16. On July 29, 2016, Respondent was issued an Administrative Compliance Order, Docket No. CWA-02-2016-3039 (“2016 Order”), for failure to meet the monthly average and the daily maximum limits for copper in 40 C.F.R. § 433.15 for samples collected on October 7, 2015 and November 11, 2015; for failure to meet zinc monthly average metal finishing limit for a sample collected on October 7, 2015; and for failure to meet the monthly average and daily maximum metal finishing limits for zinc for a sample collected on November 11, 2015. The 2016 Order stated that “Respondent shall submit Periodic Reports in accordance with 40 C.F.R. § 403.12(e), due by June 30 and December 31 of each year, to EPA, the Control Authority, with a copy to the POTW. Along with the Periodic Reports, Respondent shall submit a certification as required by 40 C.F.R. § 403.12(b)(6).”
17. On August 10, 2016, Respondent signed an acknowledgment of receipt of the 2016 Order.
18. On February 9, 2023, EPA sent an e-mail in the morning to inquire about the Respondent’s status of submitting the periodic report on continued compliance that was due to EPA by December 31, 2022.
19. On February 9, 2023, the Respondent responded in the afternoon via e-mail by providing a cover letter dated February 9, 2023, transmitting the periodic report on continued compliance that was due to EPA by December 31, 2022.
20. Respondent failed to submit the periodic report on continued compliance by December 31, 2022.
21. On February 13, 2023, EPA sent an e-mail to the Respondent to inquire about the reason for the Respondent’s failure to submit the periodic report on continued compliance by December 31, 2022. The respondent replied that “I apologize for the delay. The report was not submitted as I was waiting on the semi-annual lab data as well as our final year end production data. I plan to work with our lab to improve the timing of the reports. It appears they have changed their process and are now outsourcing some of my testing which resulted in the delay in data reporting.”
22. Based upon the above paragraphs, EPA finds that Respondent violated Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulation set forth at 40 C.F.R. § 403.12(e), by failing to submit the December 2022 Periodic Report on time.
23. Based on the Finding of Violation set forth in paragraph 22 above, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$25,947 per violation, up to a maximum of \$64,618 per violation.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing penalty of **\$10,000**. EPA determined the proposed penalty after taking into account the applicable factors identified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and

Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act in one (1) instance. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor (Room 1631)
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any

of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Evans Stamataky, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3201

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty, **\$10,000**, within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted in Section V above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty

assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
Docket No. CWA-02-2023-3310

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor (Room 1631)
New York, New York 10007-1866

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Evans Stamatakis, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007- 1866
(212) 637- 3201

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 11th DAY OF May, 2023.

For _____
Dore LaPosta, Director
Enforcement and Compliance Assurance Division

To: Ronald W. Aikin, EHS and Maintenance Manager
Southco, Inc.
250 East Street
Honeoye Falls, NY 14472