

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

U.S. Environmental
Protection Agency-Reg 2

2015 JUL -9 AM 6:58

REGIONAL HEARING
CLERK

IN THE MATTER OF:

Ball Metal Beverage Container Corporation
95 Ballard Road
Middletown, NY 10941

Respondent

Proceeding pursuant to §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-02-2015-3302

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, Division of Enforcement and Compliance Assistance ("DECA") 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 Ball Metal Beverage Container Corporation ("Respondent") for its violations of federal pretreatment standards and requirements promulgated pursuant to Section 307(b) of the Act, 33 U.S.C. §1317(b), and enforceable pursuant to Section 307(d) of the Act, 33 U.S.C. §1317(d).

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters of the United States, except in compliance with, inter alia, Section 402 of the Act, 33 U.S.C. §1342.
2. Section 301(b)(1)(A) of the Act, 33 U.S.C. §1311(b)(1)(A), provides that effluent limits for point sources, other than publicly owned treatment works, (i) shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to Section 304(b) of the Act, 33 U.S.C. §1314(b), or (ii) shall, in the case of a discharge into a publicly owned treatment works that meets the requirements of Section 301(b)(1)(B), require

compliance with applicable pretreatment requirements and any requirements under Section 307 of the Act, 33 U.S.C. §1317.

3. Section 306(a)(3) of the Act, 33 U.S.C. §1316(a)(3), defines “source” as any building, structure, facility, or installation from which there is or may be the discharge of pollutants. Section 306(a)(4) of the Act, 33 U.S.C. §1316(a)(4), defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a source.
4. Section 306(b) of the Act, 33 U.S.C. §1316(b), provides that the EPA Administrator must identify categories of sources, including metal finishing, and propose, publish, and revise, when needed, regulations establishing Federal standards of performance for these categories.
5. Pursuant to Section 307 of the Act, 33 U.S.C. §1317, the Administrator of EPA promulgated the General Pretreatment Regulations for Existing and New Sources of Pollution to control pollutants which pass through or interfere with treatment processes in POTWs or which may contaminate sewage sludge, at 40 C.F.R. Part 403 (“General Pretreatment Regulations”).
6. Pursuant to Section 307(b) of the Act, 33 U.S.C. §1317(b), the Administrator of EPA promulgated “Categorical Pretreatment Standards” for introduction of pollutants into treatment works, which are publicly owned, for those pollutants.
7. Section 402(b)(8) of the Act, 33 U.S.C. §1342, along with Section 307(b) of the Act, 33 U.S.C. §1317(b), establishes the National Pretreatment Program to regulate discharges from industries to POTWs as a component of the National Pollutant Discharge and Elimination System (“NPDES”) Permitting Program. The National Pretreatment Program requires non-domestic dischargers to treat or control pollutants in their wastewater before discharging to POTWs. EPA has chosen to promulgate pretreatment standard regulations pursuant to Sections 301(b) and 304(b) of the Act, 33 U.S.C. §§1311(b) and 1314(b).
8. Section 307(d) of the Act, 33 U.S.C. §1317(d), prohibits the owner or operator of any source from discharging pollutants into a publicly owned treatment works (“POTW”) in violation of the applicable pretreatment standards for that source.
9. Pursuant to 40 C.F.R. §403.3(q), the term “Publicly Owned Treatment Works or POTW” means a treatment works as defined by Section 212 of the Act [as, among other things, any devices, methods, and/or systems that, at a minimum, store, treat, or dispose of municipal waste or industrial wastes, including waste in combined storm water and sanitary sewer systems], which is owned by a State or municipality.
10. Pursuant to 40 C.F.R. §403.3(d), the term “Approved POTW Pretreatment Program or Program” means a program administered by a POTW that meets the criteria established in the General Pretreatment Regulations and which has been approved by a Regional Administrator or State Director in accordance with 40 C.F.R. §403.11 of the General Pretreatment Regulations.
11. Pursuant to 40 C.F.R. §403.3(i), the term “Indirect Discharge” or “Discharge” means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act. Pursuant to 40 C.F.R. §403.3(j), the term “Industrial User” (“IU”) means a source of Indirect Discharge.

12. "Person" is defined by Section 502(5) of the Act, 33 U.S.C. §1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
13. "Pollutant" is defined by Section 502(6) of the Act, 33 U.S.C. §1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
14. "Discharge of a pollutant" is defined by Section 502(12) of the Act, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.
15. "Point source" is defined by Section 502(14) of the Act, 33 U.S.C. §1362(14), as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, or vessel, from which pollutants are or may be discharged.
16. "Navigable waters" is defined by Section 502(7) of the Act, 33 U.S.C. §1362(7), to include the waters of the United States.
17. Section 308(a)(A) of the Act, 33 U.S.C. §1318(a)(A), provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
18. 40 C.F.R. §403.12(b) requires that an IU subject to categorical Pretreatment Standards and discharging into a POTW shall submit to the Control Authority a baseline report or baseline monitoring report ("BMR"), which includes, but is not limited to, flow measurement and measurement of pollutants. Specifically, 40 C.F.R. §403.12(b)(5) indicates that, at least for the measurement of pollutants, the IU shall submit the results of sampling and analysis identifying the nature and concentration (or mass) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass) shall be reported.
19. 40 C.F.R. §403.12(b)(6) requires that a statement be provided, which has been reviewed by an authorized representative of the IU and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the IU to meet the Pretreatment Standards and Requirements.
20. 40 C.F.R. §403.12(d) requires that within 90 days following the date for final compliance with the applicable categorical Pretreatment Standards, any IU subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in 40 C.F.R. §403.12(b)(4-6). For IUs subject to the equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 40 C.F.R. §403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the IU's actual production during the appropriate sampling period.

21. 40 C.F.R. §403.12(e) requires an IU subject to a categorical pretreatment standard to submit to the Control Authority Periodic Reports on Continued Compliance. These Periodic Reports on Continued Compliance, due during the months of June and December of each year, must, among other things, indicate the nature and concentration of those pollutants in the effluent that are subject to the applicable categorical Pretreatment Standards.
22. 40 C.F.R. §403.12(g)(2) provides that if sampling performed by an IU indicates a violation, the IU shall notify the Control Authority within 24 hours of becoming aware of the violation. The Section also provides that the IU shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation.
23. Pursuant to Section 307(b) of the Act, 33 U.S.C. §1317(b), the Administrator of EPA promulgated “Categorical Pretreatment Standards” for the Coil Coating Point Source Categories (Pretreatment Standards for Existing Sources), 40 C.F.R. Part 465, Subpart D – Canmaking Subcategory (“Coil Coating (Canmaking) Standards”). These Coil Coating (Canmaking) Standards were effective on January 2, 1984.
24. Pursuant to 40 C.F.R. §465.44, except as provided in 40 C.F.R. §403.7 and §403.13, any existing source subject to the Coil Coating (Canmaking) Standards that introduces pollutants into a POTW must comply with the Coil Coating (Canmaking) Standards and achieve the pretreatment standard limits as set forth in 40 C.F.R. §465.44.
25. Section 309(a) of the Act, 33 U.S.C. §1319(a) authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of 301 of the Act, 33 U.S.C. §1311.

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

1. The Ball Metal Beverage Container Corporation (“Respondent”), is incorporated in the State of Indiana and owns and operates a facility in the State of New York. Ball Metal Beverage Container Corporation is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
2. At all times relevant to this Administrative Complaint, Respondent owned and/or operated a facility (the “facility”) located at 95 Ballard Road, Middletown, NY where it operates, among other things, metal beverage canmaking manufacturing operations.
3. The Respondent has discharged wastewater from its manufacturing processes into the Town of Wallkill Wastewater Treatment Plant, which is a “publicly owned treatment works” within the meaning of Section 212(2)(a) of the Act, 33 U.S.C. §1292(2)(a). Wastewater or process wastewater is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. §1362(6).
4. At all times relevant to this Complaint, the facility was a “source” within the meaning of Section 306(a)(3) of the Act, 33 U.S.C. §1316(a)(3) and an “Industrial User” (“IU”) within the meaning of 40 C.F.R. §403.3(j).

5. As a non-domestic user of a POTW, the Respondent is required to comply with the requirements and standards promulgated by EPA pursuant to Sections 307 and 308 of the CWA, 33 U.S.C. §§1317 and 1318, including the General Pretreatment Regulations found at 40 C.F.R. Part 403.
6. Respondent's manufacturing activities fall within the scope of Coil Coating Point Source Category ("CCPSC"), as it is set out in 40 C.F.R. §465.44. Respondent's discharges of process wastewater to the Town of Wallkill Wastewater Treatment Plant are subject to the Categorical Pretreatment Standards for the CCPSC set forth at 40 C.F.R. Part 465.
7. Section 307(d) of the Act, 33 U.S.C. §1317(d), prohibits the owner or operator of any source from discharging pollutants into a POTW in violation of the applicable pretreatment standards for that source.
8. Pursuant to Sections 307(b) and 308(a) of the Act, 33 U.S.C. §§1317(b) and 1318(a), the Administrator of EPA promulgated 40 C.F.R. §403.12(e) which requires an IU subject to a categorical pretreatment standard to submit to the "Control Authority" (defined at 40 C.F.R. §403.12(a)) Periodic Reports on Continued Compliance ("Periodic Reports"). These Periodic Reports, due during the months of June and December of each year, must, among other things, indicate the nature and concentration of those pollutants in the effluent subject to the applicable Categorical Pretreatment Standards.
9. The Facility is subject to 40 C.F.R. §§403.12(b), (d), and (e), and was required to submit the Periodic Reports to EPA by June 30 and December 31 of every year thereafter.
10. The Town of Wallkill, New York does not have an "Approved Pretreatment Program" within the meaning of 40 C.F.R. §403.3(d). The State of New York is not approved to operate a State pretreatment program in New York in accordance with 40 C.F.R. §403.10. Therefore, pursuant to 40 C.F.R. §403.12(a), EPA, which is the Approval Authority, is the "Control Authority."
11. On April 23, 2014, EPA issued a Request for Information letter ("RFI") pursuant to Section 308 of the Clean Water Act, Docket No. CWA-IR-14-013 to Respondent, requesting it to submit, among other information, all Periodic Reports due during the months of June and December of each year for the period of January 2006 to present.
12. On May 28, 2014, EPA received the response to the above RFI letter, as attachments to a letter dated May 23, 2014 from Respondent. The Respondent submitted lab results of process wastewater testing to the Town of Wallkill from March 2006 to present. EPA reviewed the information submitted and determined that the Respondent had not submitted Periodic Reports to EPA since June 2006.
13. From at least June 2010 to December 2014, Respondent was required to submit Periodic Reports to EPA by June 30 and December 31 of each year. Respondent has not submitted ten (10) Periodic Reports to EPA as required.
14. Based upon the Paragraphs above, Respondent has violated federal pretreatment requirements set forth in the Act and its implementing regulations. Respondent is in violation of Sections 307

and 308 of the Act for failing to comply with General Pretreatment Regulations. Specifically, Respondent violated the requirements at 40 C.F.R. §403.12(e) by failing to submit the required Periodic Reports. Thus, based on the Findings cited above, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$16,000 per violation, up to a maximum of \$37,500.

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 **\$28,700**. 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, the Respondent has been found to have violated the Act in ten (10) instances. 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, Region 2
290 Broadway, 16th floor
New York, NY 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:

Melva J. Hayden, 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) 637-3230

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, **\$28,700**, within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted 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 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2015-3302

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:

Melva J. Hayden, Esq., Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007- 1866
(212) 637-3230

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 30th DAY OF JUNE, 2015.


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. EPA - Region 2
290 Broadway
New York, New York 10007-1866

To: Mr. Erich Elmer, Plant Manager
Ball Metal Beverage Container Corporation
95 Ballard Road
Middletown, NY 10941
CWA-02-2015-3302

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

IN THE MATTER OF:

Ball Metal Beverage Container Corporation
95 Ballard Road
Middletown, NY 10941

Respondent

Proceeding pursuant to §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-02-2015-3302

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2011) to the following persons at the addresses listed below:

Mr. Erich Elmer, Plant Manager
Ball Metal Beverage Container Corporation
95 Ballard Road
Middletown, NY 10941

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

I hand carried the original and a copy of the foregoing Complaint to the Office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 7/7/15
New York, New York


[Signature of Sender]
[NOTE: must be over 18]