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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-05-2025-0009
)
Vapor Bus International – A Wabtec) Proceeding to Assess a Class II Civil Penalty
Company) under Section 309(g) of the Clean Water
1010 Johnson Drive) Act, 33 U.S.C. § 1319(g)
Buffalo Grove, Illinois)
)
<u>Respondent.</u>)

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 Vapor Bus International – A Wabtec Company (“Vapor Bus”), a subsidiary of Wabtec Corporation, located in Buffalo Grove, Illinois.

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.

7. 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 Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order.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.

8. Effective Date: 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.

Jurisdiction and Waiver of Right to Hearing

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

11. Section 307(b) of the CWA, 33 U.S.C. § 1317(b), states "[t]he Administrator shall publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works."

12. Pursuant to 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. By the terms of the regulation, the requirements of Part 403 became effective three years from the date of promulgation. These standards include general prohibitions, specific prohibitions, and local limits.

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 Section 307, it shall be unlawful for any owner or operator of any source to operate in violation of any such pretreatment standard.

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with the CWA, including Section 307 of the CWA, 33 U.S.C. § 1317. The discharge of pollutants may be authorized, *inter alia*, by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

15. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which the EPA and, upon receiving authorization from the 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).

16. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Illinois requested approval from the EPA to administer its own permit program for discharges into navigable waters within Illinois, and such approval was granted by the EPA on October 23, 1977, 42 Fed. Reg. 58,566 (Nov. 10, 1977). Therefore, pursuant to the State's permit program, the Illinois Environmental Protection Agency ("IEPA") has issued IEPA NPDES permits.

17. 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 307 of the CWA, 33 U.S.C. § 1317, or Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the



CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

Factual Allegations

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

19. At all times relevant to this Consent Agreement, Respondent owned and operated the Vapor Bus International facility, a vehicular bus manufacturer located in Buffalo Grove, Illinois (the "Facility"). Respondent therefore was an "owner" or "operator" of the Facility within the meaning of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

20. The Facility is a non-domestic source regulated under Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

21. The term "indirect discharge" means the introduction of pollutants into a publicly owned treatment works ("POTW") from any non-domestic source regulated under Section 307(b), (c), or (d) of the CWA, 40 C.F.R. § 403.3(i).

22. The term "pollutant" means, in part, 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).

23. The Facility's process wastewater is industrial waste and is therefore a pollutant.

24. The term "industrial user" ("IU") means a source of indirect discharge. 40 C.F.R. § 403.3(j).



25. Respondent applied for and was issued NPDES Permit No. 2017-EP-62274 (the "Prior Permit"), which became effective on July 12, 2017, and had an expiration date of June 30, 2022.

26. Respondent applied for and was issued NPDES Permit No. 2023-EP-67914 (the "Current Permit"), which became effective on January 20, 2023, and has an expiration date of December 31, 2027.

27. At all times relevant to this Consent Agreement, either the Prior Permit or the Current Permit was in effect and Respondent was authorized to discharge process wastewater from the Facility to the Lake County Public Works Department, Des Plaines River Sewer Treatment Plant ("STP") via the Village of Buffalo Grove sanitary sewer system for treatment at the STP, only in compliance with the specific terms and conditions of the Prior or Current Permit.

28. At all times relevant to this Consent Agreement, Respondent discharged pollutants from the Facility to STP via the Village of Buffalo Grove sanitary sewer system.

29. Respondent is therefore an IU as the term is defined at 40 C.F.R. § 403.3(j).

30. Pursuant to 40 C.F.R. § 433.10, the provisions of the Effluent Guidelines and Standards for Metal Finish Point Source Category, 40 C.F.R. Part 433, apply to plants which perform any of six metal finishing operations on any basis material, including: Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacture.

31. At all times relevant to this Agreement, Respondent was an IU which performed metal finishing operations, specifically powder coating (including phosphating).

32. At all times relevant to this Agreement, Respondent was a categorical industrial user subject to the categorical pretreatment standards under 40 C.F.R. § 403.6 and the Effluent Guidelines and Standards for Metal Finish Point Source Category at 40 C.F.R. Part 433.

Count 1: Pretreatment Standards Violations

33. The statements in Paragraphs 1 through 32 are hereby incorporated by reference as if set forth in full.

34. 40 C.F.R. § 403.12(e) requires any industrial user subject to a categorical Pretreatment Standard to submit to the Control Authority during the months of June and December a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards.

35. Pursuant to 40 C.F.R. § 433.17, any new source subject to Part 433, Subpart A, that introduces pollutants into a POTW must comply with and achieve the pretreatment standards provided in 40 C.F.R. § 433.17, for, among others, Total Toxic Organics ("TTOs").

36. 40 C.F.R. § 433.12(a) provides that in lieu of requiring monitoring for TTOs, the control authority may allow dischargers to make the following certification statement: *"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for TTOs, I certify that, to the best of my knowledge and belief, no dumping of concentrated toxic organics into the wastewaters has occurred since filing of the last discharge monitoring report. I further certify that this facility is implementing the toxic organic management plan submitted to the control authority."*



37. 40 C.F.R. § 433.12(a) further provides that, for indirect dischargers, the statement allowed by 40 C.F.R. § 433.12(a) is to be included as a comment to the periodic reports required by 40 C.F.R. 403.12(e).

38. 40 C.F.R. § 433.12(b) provides that in requesting the certification alternative, a discharger shall submit a solvent management plan that specifies to the satisfaction of the control authority the toxic organic compounds used; the method of disposal used instead of dumping; and procedures for ensuring that toxic organics do not routinely spill or leak into the wastewater.

39. On eight (8) occasions between June 30, 2020, and December 31, 2023, Respondent failed to submit a solvent management plan to the control authority, and failed to submit a report indicating the nature and concentration of pollutants which are limited by the categorical Pretreatment Standards, specifically TTOs.

40. Each violation of the conditions of the Permits or Pretreatment Regulations described in Paragraph 39 above constitutes a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

41. By failing to comply with the requirements of Section 307 of the CWA, 33 U.S.C. § 1317, and the regulations promulgated thereunder, Respondent discharged pollutants in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

42. 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 \$27,378 per day of violation up to a total of \$342,218, for violations of the CWA that occurred after November 2, 2015 and

for which penalties are assessed on or after January 8, 2025, or other amounts as applicable.

See 40 C.F.R. Part 19.

43. 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, the EPA has determined that an appropriate civil penalty to settle this action is \$28,825.49.

44. Within 30 days after the Effective Date of this CAFO, Respondent must pay the \$28,825.49 civil penalty ("Assessed Penalty"). See Paragraphs 7 and 8 for an explanation of the "Effective Date."

45. Respondent must pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

46. When making a payment, Respondent must:

- a. Identify every payment with Respondent's name and the document number of this CAFO, CWA-05-2025-0009.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent must serve proof of such payment to the following persons:

Regional Hearing Clerk, U.S. EPA
r5hearingclerk@epa.gov

Jennifer Bush, Water Enforcement and Compliance Branch, U.S.
EPA
Bush.jennifer@epa.gov

Samuel Horowitz, Office of Regional Counsel, U.S. EPA
Horowitz.samuel@epa.gov

Cincinnati Finance Division, U.S. EPA
CINWD_AcctsReceivable@epa.gov

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

47. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest will become immediately due and owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

48. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty will not be subject to review.

49. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late

penalty charges, third to accrued interest, and last to principal that is the outstanding Assessed Penalty amount.

50. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO are not deductible for purposes of federal taxes.

General Provisions

51. The parties consent to service of this CAFO by email at the following valid email addresses: Horowitz.Samuel@epa.gov and whh@haaklawllc.com. Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

52. Full payment of the penalty as described in Paragraphs 43 and 44 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.

53. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in Paragraphs 43 and 44 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 violations alleged in this CAFO.

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

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

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

57. 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.

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

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

60. 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).

61. See Paragraphs 7 and 8 for an explanation of how the CAFO becomes final and effective.



Signature Page

In the Matter of:

Vapor Bus International – A Wabtec Company

Docket No. CWA-05-2025-0009

Vapor Bus International – A Wabtec Company Respondent



Robert R. Gallant
Vice President & General Mgr



Date

United States Environmental Protection Agency, Complainant

Carolyn Persoon
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

In the Matter of:

Vapor Bus International – A Wabtec Company

Docket No. CWA-05-2025-0009

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



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