

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2025-0003
)	
Watco Transloading, LLC)	Proceeding to Assess a Class II Civil Penalty
5297 River Road)	under Section 309(g) of the Clean Water
Cincinnati, Ohio,)	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 Watco Transloading, LLC (“Watco”).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives 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

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific conditions. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Ohio requested approval from EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by EPA on March 11, 1974, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, pursuant to the State's permit program, the Ohio Environmental Protection Agency ("OEPA") has issued Ohio NPDES permits.

12. 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 a condition or limitation of a permit issued under 33 U.S.C. § 1342.

Factual Allegations

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

14. At all times relevant to this CAFO, Respondent owned and operated the Watco Transloading, LLC Facility, a liquid and bulk commodity material handling and transloading facility located at 5297 River Road, Cincinnati, Ohio ("Facility").

15. At all times relevant to this CAFO, three outfalls at the Facility (Outfall 002, Outfall 003, and Outfall 011) discharged industrial stormwater runoff from the Facility into the Ohio River.

16. Outfall 002, Outfall 003, and Outfall 011 are each a discernible, confined and discrete conveyance and therefore a "point source" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The industrial stormwater runoff discharged from Outfalls 002, 003, and 011 contains “pollutants” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The Ohio River is “navigable waters” as defined in Section 502 of the CWA, 33 U.S.C. § 1362(7).

19. Respondent’s discharge of industrial stormwater runoff from Outfalls 002, 003, and 011 into the Ohio River constitutes a “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. Because Respondent owns and operates a facility with outfalls that acted as point sources for the discharge of pollutants to navigable waters, Respondent and the Facility have been subject to the CWA and the NPDES permit program at all times relevant to this CAFO.

21. Respondent was issued by OEPA NPDES Permit No. OH0105716 (the “Permit”), which became effective on October 1, 2019, under Section 402 of the CWA, 33 U.S.C. § 1342.

22. At all times relevant to this CAFO, Respondent was authorized to discharge pollutants from the Facility only in compliance with the specific terms and conditions of the Permit.

Count 1: Permit Part I.A.2 (Benchmark Monitoring at Outfall 003)

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

24. Part I.A.2 of the Permit authorizes Respondent to discharge from Outfall 003 in accordance with the limitations and monitoring requirements listed therein, requires quarterly sampling for listed parameters, and lists applicable benchmark concentrations.

25. As of EPA's inspection on February 23, 2023, Respondent did not have any record of benchmark monitoring at Outfall 003 since the effective date of the Permit. On March 24, 2023, Respondent communicated to EPA that the monitoring did not occur due to the fact that Outfall 003 had not been included in the Discharge Monitoring Report (DMR) form provided by OEPA.

26. Respondent's failure to conduct quarterly benchmark monitoring at Outfall 003 is a violation of Part I.A.2. of the Permit.

27. Respondent is a person who discharged pollutants from a point source into navigable waters in violation of its NPDES permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1402.

Count 2: Permit Part IV.C (Control Measures/BMPs)

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

29. Part IV.C of the Permit requires Respondent, as control measures/best management practices, to, among other things:

- a. (1) minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff.
- b. (3) maintain all control measures in effective operating conditions.
- c. (7) enclose or cover storage piles of salt, or piles containing salt.

30. Respondent's Facility inspection report records indicated that on three occasions between June 2021 and June 2022, the Facility's salt piles were not covered.

31. On February 23, 2023, EPA observed at least one control measure needing maintenance and/or ineffective (a filter sock around a pile of sand adjacent to the slope leading to the Ohio River, with sand on the pavement downstream of the filter sock).

32. Respondent's failure to implement and/or maintain required control measures/BMPs is a violation of Part IV.C of the Permit.

33. Respondent is a person who discharged pollutants from a point source into navigable waters in violation of its NPDES permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1402.

Count 3: Permit Part IV.D (Documentation of Control Measure Review)

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

35. Part IV.D.1. of the Permit requires Respondent, if any of the conditions listed therein occur, including but not limited to, if Respondent finds in its routine facility inspection or quarterly visual inspection that control measures are not being properly operated and maintained, Respondent must review and revise the selection, design, installation, and implementation of control measures to ensure that the condition is eliminated and will not be repeated in the future.

36. Part IV.D.2. of the Permit requires Respondent to review the selection, design, installation, and implementation of its control measures to determine if modifications are necessary if sampling results indicate an exceedance of an applicable benchmark concentration.

37. Part IV.D.3. of the Permit requires that the Respondent document a discovery of any of the conditions listed in Part IV.D.1 or 2 of the Permit within 24 hours of such discovery

and document within 30 days of such discovery any corrective actions to be taken to eliminate or further investigate the deficiency, or if no correction action is needed, the basis for that determination.

38. Respondent's Facility inspection report records indicated that on three occasions between June 2021 and June 2022, the Facility's salt piles were not covered.

39. Respondent's records of sampling indicate that, on several occasions during 2022, effluent from Outfall 002 and/or Outfall 011 exceeded benchmark concentrations for aluminum.

40. On February 23, 2023, Respondent did not have documentation of any assessment of the need for corrective action within 30 days following the discovery of the conditions in Paragraphs 38 and 39.

41. Respondent's failure to document an assessment of the need for corrective action measures following discovery of conditions listed in Part IV.D.1 or 2 of the Permit is a violation of Part IV.D of the Permit.

42. Respondent is a person who discharged pollutants from a point source into navigable waters in violation of its NPDES permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1402.

Count 4: Permit Part IV.J (SWPPP Contents)

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

44. Part IV.J.2.iii of the Permit requires Respondent's stormwater pollution prevention plan (SWPPP) to include a site map showing, among other things, the locations of all

storm water conveyances including ditches, pipes and swales, locations of all stormwater inlets and outfalls, and the location of certain non-stormwater discharges identified under Part IV.C.10 of the Permit.

45. On February 23, 2023, during an inspection conducted by EPA, Respondent's SWPPP site map did not show the locations of all required elements.

46. Respondent's failure to include all required contents in its SWPPP is a violation of Part IV.J of the Permit.

47. Respondent is a person who discharged pollutants from a point source into navigable waters in violation of its NPDES permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1402.

Count 5: Permit Part V.B.3 (Documentation of Storm Water Monitoring)

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

52. Part V.B.3 of the Permit requires Respondent to sample discharge within the first 30 minutes of a measurable storm event, or, if not possible to sample within the first 30 minutes, as soon as possible thereafter, and to maintain documentation with the SWPPP of why it was not possible to take samples within the first 30 minutes.

53. On February 23, 2023, during an inspection conducted by EPA, Respondent did not have sample records or documentation with the SWPPP of why it was not possible to take samples for several storm events occurring between February 2021 and October 2022. On May 25, 2023, Respondent provided to EPA explanations of why sampling did not occur during this time period that were contained in Respondent's DMRs.

54. Respondent's failure to maintain documentation with the SWPPP of why it was not possible to take samples within the first 30 minutes of a storm event is a violation of Part V.B.3 of the Permit.

55. Respondent is a person who discharged pollutants from a point source into navigable waters in violation of its NPDES permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1402.

Violation 6: Permit Part III.7 (Records Retention)

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

57. Part III.7. of the Permit requires Respondent to retain the following records for a minimum of three years: all sampling and analytical records; all original recordings for any continuous monitoring instrumentation; all instrumentation, calibration, and maintenance records; all plant operation and maintenance records; and all reports required by the Permit.

58. On February 23, 2023, during an inspection conducted by EPA, Respondent did not have monthly calibration records for three months in 2022.

59. Respondent's failure to maintain monthly calibration records for a minimum of 3 years is a violation of Part III.7 of the Permit.

60. Respondent is a person who discharged pollutants from a point source into navigable waters in violation of its NPDES permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1402.

Civil Penalty

61. 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.

62. Based upon the allegations 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 \$50,000.

Terms of Payment

63. Respondent agrees to pay a civil penalty in the amount of \$ 50,000. ("Assessed Penalty") within thirty (30) days after the effective date of this CAFO as described in Paragraph 81.

64. Respondent shall 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>.

65. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, No. CWA-05-2025-0003.

- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Jennifer Bush
Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
Bush.Jennifer@epa.gov

Sue Landsittel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Landsittel.Sue@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
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.

66. **Interest, Charges, and Penalties on Late Payments.** 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 Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- c. Interest. Interest begins to accrue from the Filing 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 any 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.

- d. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- e. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

67. **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 Agreement, EPA may take additional actions. Such actions 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 EPA or engaging in programs 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 shall not be subject to review.

68. 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 the principal that is the outstanding Assessed Penalty amount.

69. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

70. Tax Reporting. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov within 30 days after the Final Order ratifying this Agreement is filed. EPA recommends encrypting IRS Form W-9 email correspondence.

General Provisions

71. The parties consent to service of this CAFO by email at the following valid email addresses: Landsittel.Sue@epa.gov (for Complainant) and Kight.Karen@watco.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

72. Full payment of the penalty as described in Paragraph 63 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.

73. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in Paragraph 63 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.

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

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

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

77. 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.

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

79. This CAFO constitutes the entire agreement between the parties with respect to this matter, with the exception of the Administrative Order on Consent effective on February 24, 2025.

80. 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.

81. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, the Final Order 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.

82. 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.

83. 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).

In the Matter of:
Watco Transloading, LLC
Docket No. CWA-05-2025-0003

Watco Transloading, LLC, Respondent

Scott Rudolph	<small>Digitally signed by Scott Rudolph Date: 2025.05.23 13:47:23 -04'00'</small>	5/23/25
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_____ Scott Rudolph SVP Operations Watco Transloading, LLC.	_____ Date
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United States Environmental Protection Agency, Complainant

MICHAEL HARRIS	<small>Digitally signed by MICHAEL HARRIS Date: 2025.06.13 10:13:17 -05'00'</small>
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_____ Michael D. Harris Division Director Enforcement and Compliance Assurance Division U.S. EPA Region 5	_____ Date
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In the Matter of:
Watco Transloading, LLC
Docket No. CWA-05-2025-0003

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