

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2024-0018
)	
Elgiloy Specialty Metals)	Proceeding to Assess a Class II Civil Penalty
356 North Cross Street)	under Section 309(g) of the Clean Water
Sycamore, Illinois,)	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 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 Elgiloy Specialty Metals (Elgiloy), a, corporation in Sycamore, 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.

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 any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 307 of the CWA, 33 U.S.C. § 1317, requires the EPA Administrator to publish proposed regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (POTWs) for those pollutants which are determined not to be susceptible to treatment by, or which would interfere with the operation of, such treatment works, and to designate the category or categories of sources to which those pretreatment standards apply.

10. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, on January 28, 1981, the Administrator published "General Pretreatment Regulations for Existing and New Sources," codified at 40 C.F.R. Part 403, which became effective on March 30, 1981.

11. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, on August 23, 1985, the Administrator published pretreatment standards for existing and new sources in the

Nonferrous Metals Forming and Metal Powders Point Source Category (NFMF/MP Category), codified at 40 C.F.R. Part 471, which became effective on October 7, 1985.

12. 40 C.F.R. § 471.01(a) provides that the NFMF/MP Category applies to introduction of pollutants into a POTW from the forming of nonferrous metals (including nonferrous metal alloys), except beryllium, copper, and aluminum and their alloys, including (1) forming operations, including rolling (both hot and cold), extruding, forging, drawing, swaging, cladding, and tube reducing, and (2) ancillary operations performed as an integral part of the forming of these metals, including casting for subsequent forming, heat treatment, surface treatment, alkaline cleaning, solvent degreasing, product testing, surface coating, sawing, grinding, tumbling, burnishing, and wet air pollution control.

13. The pretreatment regulation at 40 C.F.R § 403.12(e)(1) 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 standard.

14. 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 such pretreatment standard.

15. 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.

Factual Allegations

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

17. Respondent owns and/or operates the Elgiloy Specialty Metals facility located at 356 North Cross Street in Sycamore, Illinois (the “Facility”).

18. Respondent produces drawn wire at the Facility, including nickel-cobalt alloy drawn wire.

19. At all times relevant to this Order, Respondent introduced pollutants from its wire drawing processes at the Facility into the sewer system that conveys wastewater to the City of Sycamore North Sewage Treatment Plant, a POTW (the “Sycamore POTW”).

20. The City of Sycamore is authorized to discharge treated wastewater from the Sycamore POTW to the East Branch of the South Branch of the Kishwaukee River under NPDES Permit number IL0031291.

21. The Kishwaukee River is “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. Because Respondent introduced pollutants from metal wire drawing processes at the Facility to the Sycamore POTW, at all times relevant to this order, Respondent was subject to the pretreatment standards for the NFMF/MP Point Source Category at 40 C.F.R. Part 471.

23. The introduction of pollutants from wire drawing processes at the Facility to the Sycamore POTW described in Paragraph 22 is an “indirect discharge” as that term is defined in 40 C.F.R. § 403.3(i).

24. At all times relevant to this Order, Respondent was an “industrial user” as that term is defined in 40 C.F.R. § 403.3(j).

25. The Sycamore POTW does not have an approved pretreatment program. The State of Illinois does not have an approved State pretreatment program. Therefore, EPA is the “Control Authority” as that term is defined in 40 C.F.R. § 403.3(f).

Counts 1 - 10: Failure to Submit Periodic Compliance Reports under 40 C.F.R. § 403.12(e)(1)

26. The statements in paragraphs 1 through 25 are hereby incorporated by reference as if set forth in full.

27. At all times relevant to this Order, Respondent was required under the pretreatment regulation at 40 C.F.R. § 403.12(e)(1) to submit to the EPA during the months of June and December a report indicating the nature and concentration of pollutants in the effluent which are limited by the categorical pretreatment standards for the NFMF/MP Point Source Category at 40 C.F.R. Part 471.

28. On ten (10) occasions between January 1, 2019, and December 31, 2023, Respondent did not submit to EPA a report indicating the nature and concentration of pollutants in the effluent which are limited by the categorical pretreatment standards for the NFMF/MP Point Source Category, in violation of the pretreatment regulation at 40 C.F.R. § 403.12(e)(1).

29. Each violation of the pretreatment regulation at 40 C.F.R. §403.12(e)(1) described in Counts 1 - 10 is a violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

30. Respondent is a person who has violated Section 307 of the CWA, 33 U.S.C. § 1317.

Civil Penalty

31. 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.

32. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$ 32,028.32.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the \$32,028.32 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

34. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Jennifer Bush (ECW-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Sue Landsittel (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

37. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorneys fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

General Provisions

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

39. Full payment of the penalty as described in paragraphs 32 and 33 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.

40. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 32 and 33 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.

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

42. Respondent certifies that it is complying with Section 307(d) of the CWA, 33 U.S.C. §§ 1317(d).

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

44. 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.

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

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

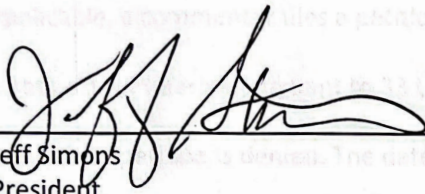
47. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which 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.

48. 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).

49. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:
Elgiloy Specialty Metals
Docket No. CWA-05-2024-0018

Elgiloy Specialty Metals, Respondent


Jeff Simons
President
Elgiloy Specialty Metals

8/13/2024

Date

United States Environmental Protection Agency, Complainant

MICHAEL
HARRIS

Digitally signed by
MICHAEL HARRIS
Date: 2024.08.27
09:54:47 -05'00'

Date

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

In the Matter of:
Elgiloy Specialty Metals
Docket No. CWA-05-2024-0018

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