

**FILED**

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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-05-2024-0009**  
)  
**ELG Metals, Inc.** ) **Proceeding to Assess a Class II Civil**  
**10321 S. Calumet Access Road** ) **Penalty under Section 309(g) of the Clean**  
**Chicago, Illinois 60617** ) **Water Act, 33 U.S.C. § 1319(g)**  
)  
**Respondent.** )  
)

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**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 ELG Metals, Inc. (ELG), a corporation in Chicago, 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 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters 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. In accordance with Section 402 (p)(2)(B) of the CWA, 33 U.S.C. § 1342 (p)(2)(B), and the regulations promulgated thereunder at 40 CFR § 122.26, an NPDES permit is required for the discharge of storm water associated with industrial activity into a navigable water.

11. Pursuant to 40 CFR § 122.26(b)(14), “Storm water discharge associated with industrial activity” means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The categories of facilities listed in 40 CFR § 122.26(b)(14) are engaging in “industrial activity” for purposes of this definition.

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 Section 301 of the CWA, 33 U.S.C. § 1311.

**Factual Allegations**

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

14. At all times relevant to this Order, Respondent owned and operated ELG Metals, Inc., a scrap metal shipping and receiving business, located at 10321 S. Calumet Access Rd., Chicago, Illinois 60617 (“Facility”), with a Standard Industrial Classification (SIC) Code of 5093.

15. Pursuant to 40 CFR § 122.26(b)(14), facilities classified within SIC Code 5093 are engaging in “industrial activity.”

16. At all times relevant to this Order, Respondent engaged in industrial activity, as described in 40 CFR § 122.26, at the Facility, so storm water discharge from the Facility constituted “storm water discharge associated with industrial activity” for purposes of 40 CFR §122.26.

17. The Calumet River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

**Count 1 Unlawful Discharge of Pollutants to the Calumet River:**

18. The statements in Paragraphs 1 through 17 are hereby incorporated by reference as if set forth in full.

19. EPA representatives conducted an inspection of the Facility on October 7, 2021, during a precipitation event, and observed conveyance, along downward sloping areas within the

Facility, and discharge, through openings in berm structures, of storm water from the Facility to the Calumet River. EPA representatives further observed that the discharge exhibited an oily sheen and contained metal scraps.

20. The conveyance pathways along downward sloping areas and openings in the berm structures served as “point sources,” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The discharge described in paragraph 19 is a storm water discharge associated with industrial activity, for purposes of 40 CFR §122.26.

22. At the time of EPA’s inspection on October 7, 2021, Respondent did not have and had not applied for an NPDES Permit under Section 402 of the CWA, 33 U.S.C. § 1342 for its storm water discharges associated with industrial activity.

23. Therefore, Respondent is a person who discharged storm water associated with industrial activity from point sources at the Facility to navigable waters, without an NPDES permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

#### **Civil Penalty**

24. 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 of 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 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

25. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violation 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 \$17,443.

Within 30 days after the effective date of this CAFO, Respondent must pay the \$17,443 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

26. 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 (or copies of proof of the electronic payment) to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
[R5hearingclerk@epa.gov](mailto:R5hearingclerk@epa.gov)

Matthew Schulte  
WWB/WE CAB (ECW-15J)  
U.S. Environmental Protection Agency  
[schulte.matthew@epa.gov](mailto:schulte.matthew@epa.gov)

Hala Kuss(C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
[kuss.hala@epa.gov](mailto:kuss.hala@epa.gov)

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

28. 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.

29. 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**

30. The parties consent to service of this CAFO by email at the following valid email addresses: [kuss.hala@epa.gov](mailto:kuss.hala@epa.gov) (for Complainant) and [joseph.cancilla@aperam.com](mailto:joseph.cancilla@aperam.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

31. Full payment of the penalty as described in paragraphs 25 and 26 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.

32. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 25 and 26 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.

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

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

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

36. 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.

37. Each party agrees to bear its own costs and attorney's fees in this action.

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

39. 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.

40. When final and effective, this CAFO is a "final order" for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, and 22.45, and the EPA's Interim Clean Water Act Settlement Penalty

Policy (Mar. 1995) and Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirement (Sept. 2016).

41. 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:**

**ELG Metals, Inc.**

**Docket No. CWA-05-2024-0009**

**ELG Metals, Inc., Respondent**



Signatory Name:

Signatory Title:

ELG Metals, Inc.



Date

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2024.01.11  
09:41:03 -06'00'

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

Date

**In the Matter of:**  
**ELG Metals, Inc.**  
**Docket No. CWA-05-2024-0009**

**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