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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2014-0007

STEELER, Inc. (Martin Luther King  
Jr. Way Facility),  
Seattle, Washington

**CONSENT AGREEMENT AND  
FINAL ORDER**

Respondent.

**I. STATUTORY AUTHORITY**

1.1 This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3 Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Steeler, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO

commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

### III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes and industrial waste.

3.4. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any storm water discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional storm water discharge sources and establish a comprehensive program to regulate these additional sources.

3.6. EPA’s regulations define “storm water discharge associated with industrial activity” to include discharges associated with facilities under Standard Industrial Classification 4221-25. 40 C.F.R. § 122.26(b)(14)(xi).

3.7. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.8. In October 2009, Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Storm Water GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2010 Storm Water GP became effective on January 1, 2010 and has an expiration date of January 1, 2015. The 2010 Storm Water GP was modified with the new effective date of July 1, 2012. The 2010 Storm Water GP authorizes certain discharges of storm water associated with industrial activity at permitted facilities.

3.9. The 2010 Storm Water GP requires facilities engaged in certain industrial activities to apply for coverage under the permit if storm water from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the 2010 Storm Water GP.

3.10. Respondent is a corporation duly organized under the laws of the State of Washington and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.11. At all times relevant to this action, Respondent was the owner and/or operator of a facility located at 10023 Martin Luther King Jr. Way South, Seattle, Washington (“Facility”). The Facility manufactures sheet metal work, including steel frames, studs, screws, joints, and other steel products.

3.12. The Facility, which was under Respondent’s control at all times relevant to this action, discharges storm water offsite into a drainage ditch that flows into the Duwamish River. The Facility’s storm water discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.13. The Duwamish River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Duwamish River is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.14. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.15. Beginning in October 2011, and at all times relevant to this CAFO, the Facility had coverage under the 2010 Storm Water GP (permit no. WAR0125358).

3.16. Respondent violated the 2010 Storm Water GP numerous times between October 2011 and March 2013. Violations were discovered during an EPA inspection of the Facility on September 19, 2012, and during a review of the administrative record for the Facility.

**Count 1: Failure to Develop a Storm Water Pollution Prevention Plan (“SWPPP”)**

3.17. Condition S3.A. of the 2010 Storm Water GP requires the permittee to develop

and implement a SWPPP. Condition S3.B. of the Storm Water GP states that the SWPPP shall contain a site map, a detailed assessment of the facility, a detailed description of Best Management Practices (“BMPs”), a Spill Prevention and Emergency Cleanup Plan, and a sampling plan.

3.18. As of the date of EPA’s inspection of the facility on September 19, 2012, Respondent had not developed or implemented a SWPPP at the Facility in violation of Condition S3.A. of the 2010 the Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 2: Failures to Sample Storm Water Discharges**

3.19. Condition S4.A. of the 2010 Storm Water GP requires the permittee to conduct sampling of stormwater in accordance with the permit and the SWPPP.

3.20. Condition S4.B.1.a. of the 2010 Storm Water GP states that the permittee “shall sample the discharge from each designated location at least once per quarter.”

3.21. Condition S4.B.2.a. states that the permittee “shall designate sampling location(s) at the point(s) where it discharges stormwater associated with industrial activity off-site.”

3.22. Respondent discharges storm water offsite from an outfall located in the southeast corner of the Facility.

3.23. Respondent failed to conduct quarterly sampling of storm water discharges from the southeast outfall for six quarters (the fourth quarter of 2011; all four quarters of 2012; and the first quarter of 2013) in violation Condition S4.A. & B. of the 2010 the Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 3: Failures to Conduct Visual Inspections**

3.24. Condition S7.A.1. requires the permittee to conduct and document visual inspections of the site each month.

3.25. Respondent failed to conduct and document monthly visual inspections from October 2011 to September 2013 in violation of Condition S7.A.1. of the 2010 Storm Water GP

and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 4: Failure to Implement Operational Source Control BMPs**

3.26. Condition S3.B.4.b.i.3. of the 2010 Storm Water GP requires a permittee to “[i]nspect all equipment and vehicles during monthly site inspections for leaking fluids such as oil” and to “[i]mmediately clean up spills and leaks . . . to prevent the discharge of pollutants.”

3.27. During EPA’s inspection of the Facility on September 19, 2012, EPA inspectors observed an oil stain adjacent to a storm water catch basin in the northwest corner of the Facility.

3.28. At the time of EPA’s inspection of the Facility on September 19, 2012, Respondent failed to immediately clean up a spill or leak at the Facility in violation of Condition S3.B.4.b.i.3. of the Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 5: Failure to Implement Erosion and Sediment Control BMPs**

3.29. Condition S3.B.4.b.v.2. of the 2010 Storm Water GP requires the permittee to implement and maintain filtration BMPs (*e.g.*, filter socks) to remove solids from catch basins, sumps or other storm water collection and conveyance systems.

3.30. At the time of EPA’s inspection of the Facility on September 19, 2012, Respondent failed to implement and maintain filtration BMPs at all of the Facility’s catch basins in violation of Condition S3.B.4.b.v.2. of the 2010 Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.31. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated any permit condition or limitation . . . in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

#### IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations contained in this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.
- 4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$40,000.
- 4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.
- 4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

- 4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Steven Potokar  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.



4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12/23/13


FOR RESPONDENT:

  
\_\_\_\_\_  
MATT SUROWIECKI, President  
Steeler, Inc.

DATED:

1/14/2014

FOR COMPLAINANT

  
\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement,  
EPA Region 10

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Handwritten scribble or signature in blue ink.

## V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 20<sup>th</sup> day of February, 2014.

  
M. Socorro Rodriguez  
Regional Judicial Officer, U.S. Environmental Protection Agency, Region 10



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Steeler, Inc. (Seattle, WA), DOCKET NO.:** **CWA-10-2014-0007** was served on the addressees in the following manner on the date specified below:

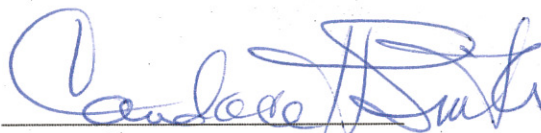
The undersigned certifies that a true and correct copy of the document was delivered to:

Endre M. Szalay  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Matt Surowiecki  
President  
Steeler, Inc.  
10023 Martin Luther King Jr. Way South  
Seattle, Washington 98178

DATED this 28<sup>th</sup> day of February, 2014

  
Signature

Candace Smith  
Regional Hearing Clerk  
EPA Region 10

