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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

IN THE MATTER OF:)
) Docket No. CWA-05-2012-0006
ARCELORMITTAL WARREN, INC.)
) Joint Civil Complaint and Consent
) Agreement and Final Order to
) Resolve a Proceeding to Assess
) A Civil Penalty Pursuant to
) Section 309(g) of the Clean Water Act,
) 33 U.S.C. § 309(g)
WARREN, OHIO,)
)
RESPONDENT.)
)

CONSENT AGREEMENT AND FINAL ORDER

1. This administrative action for the assessment of a civil penalty is being simultaneously commenced and concluded by the filing of this Consent Agreement and Final Order (CAFO) pursuant to 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) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Director of the Water Division, Region 5, United States Environmental Protection Agency (EPA or the Agency).

3. The Respondent is ArcelorMittal Warren, Inc. (Respondent), a corporation doing business in Ohio.

4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued under, *inter alia*, Section 402

of the Act, 33 U.S.C. § 1342.

5. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program under which the Administrator may issue permits for the discharge of pollutants.

6. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as may be reasonably required in carrying out Section 402 of the Act, 33 U.S.C. § 1342. Pursuant to Section 308(a), 33 U.S.C. § 1318(a), EPA has promulgated regulations pertaining to the NPDES program at 40 C.F.R. Part 122.

7. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to mean any addition or any pollutant to navigable waters from any point source.

8. “Discharge of a pollutant” is defined at 40 C.F.R. § 122.2 to mean any addition of any pollutant to waters of the United States from any point source.

9. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, define the term “pollutant” to mean, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water.

10. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean the waters of the United States.

11. “Waters of the United States” is defined at 40 C.F.R. § 122.2 to include all waters which are, were or may be used in interstate or foreign commerce, including tributaries and wetlands.

12. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2, define the term “point source” to mean any discernible, confined and discrete conveyance from which pollutants are or may be discharged.

13. Pursuant to Section 402(b) of the Act, 42 U.S.C. § 1342(b), the Administrator may authorize a State to implement the NPDES program.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

14. On March 11, 1974, EPA approved the State of Ohio, through the Ohio Environmental Protection Agency (OEPA), to administer the NPDES program, including the issuance of NPDES permits, in Ohio.

15. Respondent is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

16. Respondent owns and operates a coke plant located at 2234 Main Avenue S.W., Warren, Ohio (the Facility).

17. At the Facility, Respondent produces coke, coke gas, tar, light oil, and ammonia sulfate.

18. The Facility includes processing facilities, a coal storage area (with an associated stormwater storage pond), a wastewater treatment plant (WWTP), and a wastewater diversion structure.

19. The Facility discharges wastewater to the Mahoning River through two permitted Outfalls numbered 014 and 015.

20. The Mahoning River is a “navigable water” as that term is defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

21. The Mahoning River is a “water of the United States” as that term is defined by 40 C.F.R. § 122.2.

22. Sources of wastewater discharged through Outfall 14 are identified as non-contact cooling water, surface water runoff, ground water, and miscellaneous non-process wastewater discharges. Sources of wastewater discharged through Outfall 015 are identified as storm water runoff and ground water free of process wastewater.

23. OEPA issued a NPDES permit to Respondent for the Facility, effective December 1, 2002 (2002 Permit). The 2002 Permit expired on June 30, 2007, and on December 26, 2006, Respondent submitted a timely application to renew the 2002 Permit. Therefore, pursuant to 40 C.F.R. §122.6(d), the 2002 Permit remained in effect until the permit application was acted upon by OEPA.

24. OEPA issued a NPDES permit to Respondent for the Facility, effective August 1, 2008 (2008 Permit), with an expiration date of March 31, 2012.

25. On August 28 and 29, 2008, EPA personnel conducted an inspection at the Facility. On March 25, 2009, EPA submitted an Information Request to Respondent pursuant to Section 308 of the Act, 33 U.S.C. § 1318. On November 2, 2009, Respondent submitted a response (November 2, 2009 Response) to the March 25, 2009 Information Request.

26. Part I,A. (Final Effluent Limitations and Monitoring Requirements) of the 2002 Permit, and Part I,A. (Interim Effluent Limitations and Monitoring Requirements) of the 2008 Permit, set forth wastewater discharge effluent limits.

27. Based on Respondent’s November 2, 2009 Response to EPA’s Information Request, as well as information provided by OEPA, on the following dates Respondent

discharged wastewater in excess of the effluent limits in the 2002 Permit and the 2008 Permit:

Outfall	Date	Parameter	Permit Limit	Reported Value
014	5/6/06	pH	9.0 – 6.5 SU	6.400
014	3/20/07	pH	9.0 – 6.5 SU	9.200
014	6/5/07	pH	9.0 – 6.5 SU	9.060
014	1/24/07	CBOD	199 kg/day	284.05
014	1/24/07	CBOD	15 mg/l	19.300
014	2/21/07	CBOD	199 kg/day	1276.67
014	2/21/07	CBOD	15 mg/l	84.000
014	12/27/07	CBOD	15 mg/l	15.600
014	3/13/08	CBOD	15 mg/l	20
014	5/11/10	CBOD	15 mg/l	33
014	2/07	Free Cyanide	0.013 mg/l	0.070
014	2/07	Free Cyanide	0.172 kg/day	1.062
014	2/21/07	Free Cyanide	0.046 mg/l	0.270
014	2/21/07	Free Cyanide	0.61 kg/day	4.104
014	5/4/10	Oil & Grease	10 mg/l	10.8
015	8/9/07	pH	9.0 – 6.5 SU	4.600
015	8/10/07	pH	9.0 – 6.5 SU	5.990
015	8/13/07	pH	9.0 – 6.5 SU	6.430
015	11/06	Oil & Grease	10 mg/l	16.20
015	11/10/06	Oil & Grease	20 mg/l	25.50
015	12/06	Oil & Grease	10 mg/l	21.40
015	12/14/06	Oil & Grease	20 mg/l	27.50
015	12/20/06	Oil & Grease	20 mg/l	20.20
015	12/28/06	Oil & Grease	20 mg/l	21.10
015	1/07	Oil & Grease	10 mg/l	27.10
015	1/5/07	Oil & Grease	20 mg/l	23.70

28. By discharging wastewater in excess of the limits in Part I,A. (Final Effluent Limitations and Monitoring Requirements) of the 2002 Permit and Part I,A. (Interim Effluent Limitations and Monitoring Requirements) of the 2008 Permit, Respondent was in violation of the 2002 and 2008 Permits on each date set forth in Paragraph 27.

29. Part I, A. of the 2008 Permit requires Respondent to monitor the water

temperature of the discharge from Outfall 014 once per day.

30. According to the discharge monitoring reports (DMRs) submitted by Respondent, from October 7, 2008 to October 31, 2008, Respondent did not submit temperature data for its discharge from Outfall 014 each day.

31. By failing to record temperature values in its DMRs as required by the permit, Respondent violated Part I, A. of the 2008 Permit.

32. Part III, 2, B. of the 2008 Permit states, “[t]he effluent shall, at all times, be free of substances of an oily, greasy, or surface-active nature, and of other floating debris, in amounts that will form noticeable accumulations of scum, foam, or sheen.”

33. During the EPA inspection, the EPA inspector noticed an accumulation of foam in the receiving water from the Outfall 015 discharge.

34. The accumulation of foam in the discharge is a violation of Part III, 2, B. of the 2008 Permit.

35. Part IV, D, 4, c of the 2002 Permit states, “[a] report summarizing the scope of the[storm water pollution prevention plan, or SWPPP] inspection, personnel making the inspection, the dates(s) of the inspection, major observations relating to the implementation of the stormwater pollution prevention plan, and actions taken in accordance with paragraphs IV.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years”

36. During the EPA inspection, the EPA inspector requested that Respondent provide a copy of the 2005, 2006, and 2007 annual site inspection reports as required by the SWPPP. The Respondent did not provide the annual site inspection reports.

37. EPA's March 25, 2009 Information Request requested that Respondent provide a copy of the 2005, 2006, 2007, and 2008 annual site inspection reports as required by the SWPPP.

38. Respondent's November 2, 2009 Response included a copy of the 2005, 2007, and 2008 annual site inspection reports. However, the November 2, 2009 Response did not include a copy of the 2006 annual site inspection report.

39. Since Respondent did not provide a copy of the 2006 annual site inspection report as required by the SWPPP, Respondent violated Part IV, D, 4, c of the 2002 Permit.

40. Section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the Act, 33 U.S.C. § 1311 or has violated any permit condition or limitation implementing a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

41. On February 17, 2011, EPA issued a Notice of Intent to File a Civil Administrative Complaint to Respondent regarding the violations alleged in this CAFO. On March 25, 2011 and May 11, 2011, Respondent provided its defenses and responses to EPA regarding the allegations set forth in the February 17, 2011 Notice of Intent.

TERMS OF SETTLEMENT

42. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a CAFO.

43. 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.

44. For the purpose of this proceeding and according to 40 C.F.R. § 22.18(b) and (c), Respondent: (a) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; (b) neither admits nor denies the factual allegations in this CAFO; and (c) consents to the terms of this CAFO.

45. This CAFO settles the civil violations alleged in the February 17, 2011, Notice of Intent letter and in this CAFO.

46. Upon execution of the final order attached hereto, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this consent agreement, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the attached Final Order found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

47. Respondent agrees to pay the \$79,350 civil penalty for the alleged violations in the complaint by mailing a certified or cashier's check made payable to "Treasurer, United States of America" to the following address:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza

Mail Station SL-MO-C2GL
St. Louis, MO 63101

Payment of the civil penalty is due within thirty (30) calendar days from the effective date of this CAFO, which is the date that the CAFO is filed with the Regional Hearing Clerk. EPA reserves the right to require Respondent to provide a docket number on the check.

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

49. When Respondent pays the civil penalty in accordance with Paragraph 47 above, Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three parties at the address indicated:

Regional Hearing Clerk
Planning and Management Division (19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Cynthia A. King
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Newton Ellens
Water Division (WC-15J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

50. Respondent's failure to pay the assessed civil penalty in accordance with Paragraph 47, above, will result in the referral of this matter to the United States Department of

Justice for collection in accordance with Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest of this penalty, Respondent shall also be required to pay attorney's fees and costs for collection.

51. Interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

52. Respondent agrees to comply with the requirements of the 2008 Permit and the Act.

OTHER MATTERS

53. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes.

54. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it.

55. Each party agrees to bear its own costs and attorneys' fees accrued in the course of this action.

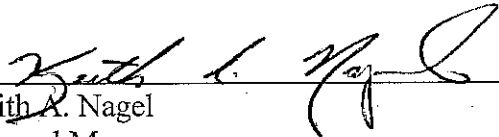
56. Pursuant to 40 C.F.R. § 22.38, the State of Ohio was notified of this proceeding.

57. The effective date of this CAFO is the date that the Final Order signed by the Regional Administrator or her designated representative is filed in the office of the Regional Hearing Clerk, and is subject to the requirements of Section 309(g)(4)(C) of the Act, 33 U.S.C. 1319(g)(4)(C).

58. This CAFO shall automatically terminate upon Respondent's compliance with paragraph 47 above.

For Respondent:

ArcelorMittal Warren, Inc.




Keith A. Nagel
General Manager
Environmental Affairs & Real Estate
ArcelorMittal USA LLC

Date: 2/16/2012

For Complainant:

United States Environmental Protection
Agency, Region 5



Tinka G. Hyde
Director, Water Division
U.S. EPA, Region 5

Date: 3/7/2012

In the Matter of ArcelorMittal Warren, Inc.
Warren, Ohio
Docket Number: CWA-05-2012-0006

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. This Final Order disposes of this proceeding in accordance with 40 C.F.R. § 22.31. Accordingly, this Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law other than those violations resolved by this Consent Agreement. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Susan Hedman
Regional Administrator

Date _____