

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CWA-05-2024-0005
)	
McDonald Steel Corporation)	Proceeding to Assess a Class II Civil
100 Ohio Ave.)	Penalty under Section 309(g) of the Clean
McDonald, Ohio 44437)	Water Act, 33 U.S.C. § 1319(g)
)	
)	
<u>Respondent.</u>)	

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, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is McDonald Steel Corporation, a corporation doing business in McDonald, Ohio.

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 any pollutant 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 OH NPDES permits.

12. Section 502(5) of the CWA defines a “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

13. Section 502(6) of the CWA defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

14. Section 502(12) of the CWA defines “discharge of a pollutant,” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

15. Section 502(14) of the CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

16. Section 502(7) of the CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

17. 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, which includes discharges not in compliance with a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Allegations and Alleged Violations

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

19. At all times relevant to this Order, Respondent owned and/or operated the McDonald Steel Facility (or the “Facility”), a facility that produces hot rolled special steel shapes using steel slabs or billets as raw materials, located at 100 Ohio Ave, McDonald, OH 44437.

20. OEPA issued a permit OH0064220 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, to Respondent for discharge of, among other pollutants, oil and grease from Outfall 001 at the Facility to the Mahoning River.

21. At all times relevant to this Order the Facility’s Outfall No. 001 discharged oil and grease into the Mahoning River.

22. Oil and grease are “pollutants” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. The discharge described in paragraph 21 is a “discharge of a pollutant” as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

24. Outfall No. 001 at the McDonald Steel Facility is a discernible, confined and discrete conveyance, and constitutes a “point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. At all times relevant to this Order, the outfall at the McDonald Steel Facility was a point source of “discharges” of a “pollutant” to the Mahoning River.

26. The Mahoning River is a navigable water within the meaning of 502(7) of the CWA, 33 U.S.C. § 1362(7).

27. Because Respondent owned and operated a facility with outfalls that acted as a point source for the discharge of pollutants to navigable waters, Respondent and the Facility have been subject to the CWA and the NPDES program at all times relevant to this Order. Thus, any such discharge has been and is subject to the specific terms and conditions prescribed in the Permit.

28. The Permit includes monitoring and reporting requirements that require Respondent to sample and test its effluent and monitor its compliance with Permit conditions and applicable regulations, according to specific procedures. The Permit also requires Respondent to file certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring and noncompliance reports with OEPA, as appropriate.

29. The Permit contains effluent limitations and monitoring requirements that place certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Part I.A of the Permit, which is incorporated herein by reference.

30. Following a review of Enforcement and Compliance History Online (ECHO),¹ and a review of Respondent’s Certified Discharge Monitoring Reports (DMRs) and other records, EPA has determined that McDonald Steel violated the following requirements of the Permit and the CWA: (a) exceeded the Permit’s daily maximum concentration limitation of 4.6 milligrams per liter (mg/l) for oil and grease five (5) times during the period of July 2017 to July 2019; (b) exceeded the Permit’s daily maximum loading limitation of 35 kilograms per day (kg/day) for oil and grease five (5) times during the period of July 2017 to June 2018; and (c)

¹ ECHO is a dashboard of integrated compliance and enforcement information for facilities for the public to assess their compliance with environmental regulations. See <https://echo.epa.gov/>.

exceeded the Permit's daily maximum loading limitation of 11.67 kg/day twenty-seven (27) times during the period of October 2018 to April 2020, as specified in Attachment A.

Alleged Violations: Unlawful Discharge of Pollutants into the Mahoning River

31. The statements in Paragraphs 1 through 30 are hereby incorporated by reference as if set forth in full.

32. From July 2017 through April 2020, Respondent discharged Pollutants from the Facility which exceeded the permitted effluent limitations established in the NPDES Permit 37 times for oil and grease at Outfall 001, as specified in Attachment A, which is incorporated by reference.

33. Respondent's discharge of oil and grease in exceedance of its Permit limits during the period of July 2017 to April 2020 from Outfall 001 to the Mahoning River constitutes a "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

34. Therefore, Respondent is a person who discharged pollutants from a point source to navigable waters in violation of its Permit, Section 301 of the CWA, 33 U.S.C. § 1311.

35. Each day the pollutant remains in the navigable waters and/or each day the pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

36. 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.

37. 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 \$120,000.

38. Within 30 days after the effective date of this CAFO, Respondent must pay the \$120,000 civil penalty by either:

For checks sent by regular U.S. Postal Service mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

Or for on-line payment, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

39. 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
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Matthew Schulte
WWB/WECAB (ECW-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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

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

41. 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.

42. 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 26 U.S.C. § 6621(a)(2); 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

43. The parties consent to service of this CAFO by email at the following valid email addresses: prout.susan@epa.gov (for Complainant) and joseph.koncelik@tuckerellis.com (for Respondent).

44. Full payment of the penalty as described in paragraphs 37 and 38 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.

45. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 37 and 38 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.

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

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

48. When final and effective, this CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, 22.18, 22.31, and 22.45, and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

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

50. 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.

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

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

53. This Consent Agreement proposes issuance of a civil penalty order pursuant to Section 309(g) of the CWA and the Consolidated Rules, including 40 C.F.R. § 22.45. 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. § 1219(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and 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 for detailed information on the procedures regarding Consent Agreement and Final Orders as penalty orders under the CWA and settlements under Part 22.

54. 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 such 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: McDonald Steel Corporation
Docket No. CWA-05-2024-0005**

McDonald Steel Corporation, Respondent



Signatory Name: MARK PECCHIA
Signatory Title: CFO
McDonald Steel Corporation

9/25/2023
Date

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2023.11.08
16:18:30 -06'00'

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

Date

In the Matter of:
McDonald Steel Corporation
Docket No. CWA-05-2024-0005

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 Consent Agreement and Final Order shall become effective 30 days following issuance, unless, if applicable, a commenter files a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C) or a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8), or 30 days after such request or petition is denied. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5