

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2022-0009
)	
PET Processors, LLC)	Proceeding to Assess a Class II Civil
1350 Bacon Road)	Penalty under Section 309(g) of the Clean
Painesville, Ohio 44077-4781)	Water 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 (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 PET Processors, LLC (PET Processors), a limited liability company located in Painesville, 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 voluntarily enters into and 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. 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 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 prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

Factual Allegations

13. Respondent is a limited liability company incorporated in the State of Florida and registered in the State of Ohio, and therefore a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this CAFO, Respondent owned and operated the PET Processors facility, a toll manufacturer for the plastics industry and compounding manufacturer of plastic resins and compounds, located in Painesville, Ohio (“Facility”).

15. Lake Erie is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. Respondent was issued a permit no. OH0001074 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, by Ohio EPA.

17. The Permit became effective on January 1, 2017 and expired on December 31, 2021. At all times relevant to this CAFO, Respondent was authorized to discharge pollutants from the Facility to Lake Erie only in compliance with the specific terms and conditions of the Permit.

18. Under Ohio Administrative Code 3745-33-04 (c)(1), for a permittee to continue to discharge after its NPDES permit expires, the permittee must submit a renewal application to Ohio EPA no later than 180 days prior to the date of expiration of the NPDES permit. Ohio EPA has confirmed that PET Processors has met the requirements, so permit no. OH0001074 remains in effect.

19. At all times relevant to this CAFO, the Facility's internal monitoring stations 604, 605, and 606 discharge through Outfall 001.

20. At all times relevant to this CAFO, the Facility's storm water associated with industrial activity discharges through Outfall 002.

21. At all times relevant to this CAFO, the Facility's Outfall No. 001 was permitted to discharge, among other pollutants, total suspended solids (TSS), biochemical oxygen demand (BOD), oil and grease, and water with pH into Lake Erie under the terms and conditions set forth in the Permit.

22. At all times relevant to this CAFO, the Facility's Outfall No. 002 was permitted to discharge, among other pollutants, zinc into Lake Erie under the terms and conditions set forth in the Permit.

23. TSS, BOD, oil and grease, and acidity are "pollutants," as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. The discharges described in paragraphs 19 and 22 are "discharges of a pollutant," as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

25. Outfalls No. 001 and 002 at the Facility are each a "point source," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. At all times relevant to this CAFO, the outfall at the Facility was a point source of “discharges” of “pollutants” to Lake Erie.

27. Because Respondent owned or operated a Facility with an Outfall that acted as a Point Source for the Discharge of Pollutants to Navigable Waters, Respondent and the Facility have been subject to the CWA 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 NPDES Permit.

28. EPA conducted an NPDES compliance evaluation inspection at the Facility on March 19-20, 2019, and April 22, 2019 (“2019 Inspection”).

Count One: Unlawful Discharge of Pollutants into Lake Erie

29. The statements in paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

30. The Permit set limitations on Respondent’s TSS, BOD, oil and grease, and acidity discharges.

31. 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.

32. The Permit requires Respondent to file certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring its effluent with Ohio EPA.

33. Certified DMRs filed by Respondent with Ohio EPA, as required by the Permit, show discharges of pollutants from the Facility which exceed the effluent limitations established in the Permit.

34. More specifically, from March 3, 2016 through October 14, 2021, Respondent discharged effluent in violation of the TSS, BOD, oil and grease, chlorine and acidity limitations set forth in the Permit. Those discharges are listed in Attachment A.

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

36. Each day a pollutant is discharged to the navigable waters constitutes a violation of the CWA and a day in violation of Sections 301 and 309 of the CWA, 33 U.S.C. §§ 1311 and 1319.

Count Two: Failure to Ensure Vegetation in the Settling Pond was Maintained as Required by the Permit

37. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

38. The Permit includes operation and quality control requirements.

39. The Respondent is required to ensure that vegetation in the settling pond at the Facility is maintained as specified in Part III.3.A of the Permit.

40. Respondent failed to meet these requirements at the Facility as shown by the accumulation of various forms of vegetation in the north end of the west settling pond around the passive discharge point from the pond observed during the 2019 Inspection.

41. Therefore, Respondent is a person who violated the operation and quality control requirements of the Permit.

42. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Count Three: Failure to Follow Best Management Practices as Required by the Permit

43. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

44. The Permit includes best management practices.

45. The Respondent is required to ensure that the exposure of industrial materials to stormwater runoff is minimized pursuant to Parts IV.C.2 and IV.C.11 of the Permit.

46. As evidenced by information EPA collected during the 2019 Inspection, Respondent failed to meet these requirements at the Facility as shown by the presence of spilled pellets on the east side of the rail lines which is an industrial stormwater drainage area which discharges to Outfall 002.

47. Therefore, Respondent is a person who violated the best management practices requirement of the Permit.

48. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Count Four: Failure to Follow Monitoring and Reporting as Required by the Permit

49. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

50. The Permit includes monitoring and reporting requirements.

51. The Permit required Respondent to conduct all monitoring pursuant to Part I.A of the Permit.

52. Respondent failed to meet a requirement in Part I.A. of the Permit by failing to report benchmark monitoring results for zinc at Outfall 002 as shown by information EPA collected during the 2019 Inspection.

53. Therefore, Respondent is a person who violated the reporting requirement of the Permit.

54. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Count Five: Failure to Maintain Records as Required by the Permit

55. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

56. The Permit includes records retention requirements.

57. Specifically, the Permit required Respondent to retain all original records of Storm Water Pollution Prevention Plan (SWPPP) training, SWPPP inspections, and turbidity monitoring at the wastewater treatment plant.

58. As shown by information EPA collected during the 2019 Inspection, Respondent failed to maintain the following records:

- a. Any formal training records for the SWPPP as specified in Part IV.C.9 of the Permit.
- b. Inspection records for quarterly routine inspections, quarterly visual inspections or annual comprehensive inspections under the SWPPP as specified in Parts IV.E.1-3 of the Permit.

59. Therefore, Respondent is a person who violated the record retention requirements of the Permit.

60. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Count Five: Failure to Sample Effluent Required by the Permit

61. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

62. The Permit requires the Respondent to collect representative samples of the PET Processors, LLC, Facility effluent.

63. As shown by information EPA collected during the 2019 Inspection, Respondent failed to:

- a. Report the maximum temperature during a sampling day for every sampling event at Outfall 001 as specified in Part I.A.1.d. of the Permit.
- b. Collect samples in proportion to the total volume discharged when sampling from Station 606 as specified in Part II.F of the Permit.
- c. Collect a screened effluent sample from Station 604 on July 18, 2018, as specified in Part II.B of the Permit.
- d. Collect effluent samples at Outfall 001 with appropriate sampling equipment as specified in Part III.5 of the Permit from 2017 to the present.
- e. Include in the DMRs the pollutant monitoring results from monitoring that occurred more frequently than required by the Permit as specified in Part III.4.E of the Permit. Respondent failed to meet this requirement by only including one turbidity severity value per week in the DMR even though its contractor, Clean Streams Inc. recorded a turbidity unit daily.
- f. Collect the following samples:
 - i. Three instances during 2016 when the permit required sample collection was not completed.
 - ii. In 2017:
 1. In January and February, Outfall 001 for pH for the second biweekly sample;
 2. In February, Outfall 001 for pH, BOD and TSS;
 3. In April, Outfall 001 for oil/grease and Station 606 for BOD, TSS and oil/grease;
 4. In August, Outfall 001 for zinc; and
 5. In September, Station 604 for TSS, and the flow was not reported in the DMR.
 - iii. In 2018:
 1. In January, Outfall 001 for oil/grease;
 2. In July, Outfall 001 for oil/grease, pH and Station 605 for oil/grease and BOD;
 3. In August, Outfall 001 for phosphorus and zinc;
 4. In September, Outfall 001 for pH, oil/grease, total residual chlorine and phosphorous, Station 604 for TSS and total trihalomethane, and Station 605 for oil/grease and total trihalomethane;
 5. In October, Station 605 for TSS and BOD;
 6. In November, Outfall 001 for phosphorous, Station 604 for TSS, and Station 605 for BOD, TSS and oil/grease; and

7. In December, Outfall 001 for zinc and phosphorous.
- iv. In 2019:
 1. In March, Outfall 001 for oil/grease and zinc.

64. Therefore, Respondent is a person who violated the sampling requirement of the Permit.

65. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Count Six: Failure to Maintain Quality Control of Sampling Procedures Required by the Permit

66. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

67. The Permit requires the Respondent to maintain quality control of sampling procedures.

68. As shown by information EPA collected during the 2019 Inspection, Respondent failed to:

- a. Maintain a chain of custody for all samples from 2017 through 2019; and
- b. Obtain analytical data for samples collected by Clean Stream Inc. from 2017 through 2019.

69. Therefore, Respondent is a person who violated the quality control of samples requirement of the Permit.

70. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Count Seven: Failure to Maintain Quality Control of Sampling Procedures Required by the Permit

71. The statements in Paragraphs 1 through 28 are hereby incorporated by reference as if set forth in full.

72. Part III.5. of the Permit requires the Respondent to follow the test procedure for the analysis of pollutants outlined in 40 CFR Part 136.

73. As shown by information EPA collected during the 2019 Inspection, Respondent failed to meet the sample holding times as required in 40 CFR Part 136.3(e) in the following ways:

- a. BOD sample and TSS sample for Station 606 in March 2017;
- b. BOD sample for Station 605 in March 2017; and
- c. BOD sample for Station 605 in February 2019.

74. Therefore, Respondent is a person who violated the test procedure for samples requirement of the Permit.

75. Each day that a person violates a term or condition of its NPDES permit is a day of violation under Section 309(g) of the CWA.

Civil Penalty

76. 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 \$23,989 per day of violation up to a total of \$299,857, 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.

77. 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 \$127,000.

78. Within 30 days after the effective date of this CAFO, Respondent must pay the \$127,000 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.

79. 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, via electronic mail, to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590
R5hearingclerk@epa.gov

Jason Hewitt (ECW-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
hewitt.jason@epa.gov

Padma Bending (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
bending.padmavati@epa.gov

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

81. 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.

82. 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

83. The parties consent to service of this CAFO by email at the following valid email addresses: bending.padmavati@epa.gov (for Complainant) and Joseph.Koncelik@tuckerellis.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

84. Full payment of the penalty as described in paragraphs 76 and 77 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.

85. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 76 and 77 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.

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

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

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

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

90. 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.

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

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

93. 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.

94. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5) and 40 C.F.R. § 22.45, unless an appeal for judicial review is filed, this CAFO shall become effective 30 days after the date of issuance. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:
PET Processors, LLC
Docket No. CWA-05-2022-0009

PET Processors LLC, Respondent



Joseph Reyes
President

23 August 2022

Date

In the Matter of:
PET Processors, LLC
Docket No. CWA-05-2022-0009

United States Environmental Protection Agency, Complainant

MICHAEL
HARRIS

Digitally signed by
MICHAEL HARRIS
Date: 2022.09.15
09:55:18 -05'00'

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

Date

In the Matter of:
PET Processors, LLC
Docket No. CWA-05-2022-0009

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, unless an appeal for judicial review is filed, this Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after issuance. The date of issuance is the date this Final Order is signed. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.10.27
10:32:54 -05'00' Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Pet Processors LLC
Docket Number: **CWA-05-2022-0009**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CWA-05-2022-0009** which was filed on **September 15, 2022**, in the following manner to the following addressees:

Copy by E-mail to Respondent: Joseph Reyes
Joseph.Reyes@petus.com

Copy by E-mail to Attorney for Complainant: Padmavati Bending
Bending.Padmavati@epa.gov

Copy by E-mail to Attorney for Respondent: Joseph P. Koncelik
Joseph.Koncelik@tuckerellis.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle

Dated: _____

**JULIANE
GRANGE**

Digitally signed by
JULIANE GRANGE
Date: 2022.10.27
11:28:09 -05'00'

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5