

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Jeffrey Kopf  
Name of Case Attorney

7/17/18  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2018-0034 and CWA-01-2018-0033

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Bath Iron Works  
700 Washington Street  
Bath, ME 04530

Total Dollar Amount of Receivable \$ 355,000 Due Date: 8/16/18

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_  
Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
FIVE POST OFFICE SQUARE SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

JUL 16 2018

EPA ORC WS  
Office of Regional Hearing Clerk

July 16, 2018

**BY HAND**

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square  
Suite 100, Mail Code ORC 04-6  
Boston, MA 02109-3912

Re: *In the Matter of: Bath Iron Works*; Docket Nos. EPCRA-01-2018-0034 and CWA-01-2018-0033

Dear Ms. Santiago,

Enclosed for filing, please find an original and one copy of the Consent Agreement and Final Order (CAFO) both initiating and settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey Kopf".

Jeffrey Kopf  
Senior Enforcement Counsel  
EPA Region 1

Enclosures

cc: Bill Taylor, Esq., Pierce Atwood LLP  
Ken Gray, Esq., Pierce Atwood LLP  
Christine Foot, Enforcement Counsel, EPA Region 1 (via email)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

\_\_\_\_\_) )  
IN THE MATTER OF ) )  
) )  
**BATH IRON WORKS** ) )  
700 Washington Street ) )  
Bath, ME 04530 ) )  
) )  
Respondent ) )  
) )  
Proceeding under Section 325(c) of the ) )  
Emergency Planning and Community ) )  
Right-to-Know Act, 42 U.S.C. § 11045(c) ) )  
and Section 309(g) of the Clean Water Act, ) )  
33 U.S.C. § 1319(g) ) )  
\_\_\_\_\_)

Docket No: CWA-01-2018-0033  
EPCRA-01-2018-0034

**CONSENT AGREEMENT  
AND FINAL ORDER**



Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”) alleges that Bath Iron Works (hereinafter referred to as “Respondent”) has violated Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11023 (also known as the “Emergency Planning and Community Right-to-Know Act” or “EPCRA”) and the federal regulations promulgated thereunder, and Section 301 of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a).

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22, EPA and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1) and 40 C.F.R. § 22.38(b), EPA has notified the state of Maine of this action.

Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of EPA and Respondent, it is hereby ordered and adjudged as follows:

**I. STATUTORY AND REGULATORY AUTHORITY**

**EPCRA**

1. The Emergency Planning and Community Right-to-Know Act of 1986 was created to help communities plan for chemical emergencies by requiring industry to report on the storage, use, and release of hazardous substances to federal, state, and local governments. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities may use this information to improve chemical safety and protect public health and the environment.

2. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

3. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in

quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as “Form A”). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located. Forms R and Forms A are hereinafter referred to as “TRI Forms.”

4. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification (“SIC”) code or North American Industry Classification System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

5. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), and the Debt Collection Improvement Act, 31 U.S.C. § 3701, collectively, the “Inflation Laws”), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, authorizes the assessment of civil administrative penalties of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred from January 12, 2009 through November 2, 2015, and civil administrative penalties of up to \$54,789 per day for

each violation of Section 313 of EPCRA that occurred after November 2, 2015 and is assessed after January 14, 2017. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a Section 313 violation continues constitutes a separate violation.

### CWA

6. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a).

7. To accomplish the objectives of the Act, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

8. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership [or] association."

9. 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."

10. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, chemical wastes, biological materials, rock, sand, and industrial waste discharged into water.

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

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

13. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any stormwater discharge “associated with industrial activity” to be authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit.

14. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

15. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

16. Forty C.F.R. § 122.26(c)(1) provides that dischargers of stormwater “associated with industrial activity” are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

17. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

18. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the EPA Administrator may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On January 12, 2001, the Administrator granted the State of Maine the authority to issue Maine Pollutant Discharge Elimination System (“MEPDES”) permits for all areas of the State other than Indian Country pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). On October 31, 2003, EPA approved the State of Maine’s application to administer the NPDES program in Indian territories (with certain exceptions). On March 26, 2012, EPA granted Maine additional authority for issuing and administering permits for specific treatment works owned by certain

Indian tribes in Maine.

19. Section 402(p), 33 U.S.C. § 1342(p), EPA's implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), and Section 9(a)(1)(ii) of the State of Maine Department of Environmental Protection ("MEDEP") Rules concerning Applications for Waste Discharge Licenses, 06-096 C.M.R. 521(9)(a)(1)(ii), require stormwater discharges "associated with industrial activity" to be authorized by a NPDES permit.

20. Forty C.F.R. § 122.26(b)(14)(ii) and Chapter 521, Section 9(b)(14)(ii) of the MEDEP Rules concerning Applications for Waste Discharge Licenses, 06-096 C.M.R. 521(9)(b)(14)(ii), specify that "storm water discharge associated with industrial activity" includes stormwater discharge from facilities classified as Standard Industrial Classification ("SIC") 3731 (Sector R: Ship and Boat Building or Repairing Yards).

21. On October 11, 2005, MEDEP issued the 2005 MEPDES Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity ("2005 MEMSGP"). It remained in effect until the effective date of the 2011 MEDPES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("2011 MEMSGP"), which was April 26, 2011.

22. On December 7, 2016, MEDEP issued the 2016 MEPDES Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity ("2016 MEMSGP"). The 2016 MEMSGP became effective on March 8, 2017.

23. Under the 2011 MEMSGP, a facility discharging stormwater "associated with industrial activities" is required to submit a Notice of Intent ("NOI"), prepare and implement a Stormwater Pollution Prevention Plan ("SWPPP"), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.



24. Part V.A. of the 2011 MEMSGP requires that the SWPPP must describe and ensure the implementation and maintenance of Best Management Practices (“BMPs”) and Control Measures as described in Part V. of the 2011 MEMSGP. Implementation of the SWPPP must reduce or eliminate polluted stormwater discharges associated with industrial activity, and assure compliance with the 2011 MEMSGP.

25. Section 309(g) of the CWA, 33 U.S.C. § 1319, provide for the assessment of penalties for violations of Section 301 of the CWA, 33 U.S.C. § 1311, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. The Inflation Laws referenced in Paragraph 5 and 40 C.F.R. Part 19 increase those penalties for inflation.

## **II. GENERAL ALLEGATIONS**

26. Bath Iron Works is a corporation organized under the laws of the State of Maine with a usual place of business at 700 Washington Street, Bath, Maine 04530.

27. As a corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

28. Respondent owns and operates a shipyard, located at 700 Washington Street, Bath, Maine 04530 (“the Facility”), where Respondent builds naval destroyers.

29. At all times relevant to this CAFO, Respondent was the owner and/or operator of a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

30. The Facility has 10 or more “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.

31. The Facility is classified in a NAICS code of 336611 (shipbuilding and repair), which is set forth in 40 C.F.R. § 372.23.

32. During Respondent's operation of the Facility in the calendar years 2013, 2014, and 2015, Respondent processed chromium, copper, manganese, and nickel, each of which is a toxic chemical listed under 40 C.F.R. § 372.65, each in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25.

33. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent's facility.

34. On July 15, 2016, a duly authorized representative of EPA conducted a compliance evaluation inspection of the facility (the "EPCRA Inspection") to determine its compliance with EPCRA reporting requirements.

35. Respondent submitted an NOI for coverage for the Facility on May 10, 2011, under the 2011 MEMSGP.

36. MEDEP provided acknowledgement to Respondent on July 12, 2011 indicating that the active date of 2011 MEMSGP Permit coverage for the Facility (permit #MER05B212) was April 26, 2011.<sup>1</sup>

37. Stormwater runoff from the Facility drains to the Kennebec River via various stormwater conveyance paths and outfalls.

38. The outfalls are "point source[s]" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

39. The discharges from these outfalls contain chemical wastes, biological materials, rock, sand, garbage, and industrial waste which are "pollutant[s]" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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<sup>1</sup> Respondent continued to operate under the 2011 MEMSGP until it obtained coverage under the 2016 MEMSGP, effective, March 8, 2017.

40. The Kennebec River is a “waters of the United States,” within the meaning of the CWA and the regulations promulgated thereunder that were in effect at the time of Respondent’s activities.

41. On December 5, 2006, MEDEP staff conducted an industrial stormwater inspection at the Facility to determine the Facility’s compliance with the 2005 MEMSGP. By letter dated December 18, 2006, MEDEP informed Respondent, among other things, that:

- the area around catchbasin 005-S (Zone 4) must be swept daily when activity occurs that produces blast grit.

42. On September 23, 2008, MEDEP staff conducted another industrial stormwater inspection at the Facility. By letter dated October 21, 2008, MEDEP informed Respondent, among other things, that:

- washwater is not allowed to be discharged to waters of the State. MEDEP specifically informed Respondent that any catch basin downhill of a wash area must be covered in the event wash water is directed that way; and
- catch basins around certain specified industrial areas must be properly maintained and good housekeeping practices must be implemented.

Respondent responded to this letter by letter dated October 31, 2008, indicating that it had constructed a new wash pad to ensure no process wash water would discharge to a storm drain.

43. On August 31, 2012, MEDEP staff conducted another industrial stormwater inspection at the Facility. A copy of the inspection form was sent to Respondent on, or around, October 22, 2012, indicating, among other things, that:

- catch basins adjacent to blast grit cyclones, or adjacent to areas where grit is handled, or used, should have some form of insert in them;

- special attention should be given to where dumpsters are placed and that if they are placed near catch basins the company should ensure that drain plugs should be in and rain lids should be functional and kept down at all times; and
- areas behind blast sheds need to be checked more frequently and accumulation of grit cleaned up on a regular basis.

44. On October 12-13, 2016, authorized representatives of EPA and MEDEP visited the Facility to review compliance with Federal and State environmental laws and regulations, including compliance with the 2011 MEMSGP (the “CWA Inspection”).

### III. EPCRA VIOLATIONS

#### **Count 1: Failure to Timely File TRI Form for Chromium for Reporting Year 2015**

45. The foregoing paragraphs 1 through 44 are incorporated by reference as if fully set forth herein.

46. During the calendar year 2015, Respondent processed chromium, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2016.

47. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2016.

48. Respondent’s failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

#### **Count 2: Failure to Timely File TRI Form for Chromium for Reporting Year 2014**

49. The foregoing paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

50. During the calendar year 2014, Respondent processed chromium, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2015.

51. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2015.

52. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 3: Failure to Timely File TRI Form for Chromium for Reporting Year 2013**

53. The foregoing paragraphs 1 through 52 are incorporated by reference as if fully set forth herein.

54. During the calendar year 2013, Respondent processed chromium, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

55. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

56. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 4: Failure to Timely File TRI Form for Copper for Reporting Year 2015**

57. The foregoing paragraphs 1 through 56 are incorporated by reference as if fully set forth herein.

58. During the calendar year 2015, Respondent processed copper, a chemical category listed

under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2016.

59. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2016.

60. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 5: Failure to Timely File TRI Form for Copper for Reporting Year 2014**

61. The foregoing paragraphs 1 through 60 are incorporated by reference as if fully set forth herein.

62. During the calendar year 2014, Respondent processed copper, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2015.

63. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2015.

64. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 6: Failure to Timely File TRI Form for Copper for Reporting Year 2013**

65. The foregoing paragraphs 1 through 64 are incorporated by reference as if fully set forth herein.

66. During the calendar year 2013, Respondent processed copper, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was

therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

67. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

68. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 7: Failure to Timely File TRI Form for Manganese for Reporting Year 2015**

69. The foregoing paragraphs 1 through 68 are incorporated by reference as if fully set forth herein.

70. During the calendar year 2015, Respondent processed manganese, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2016.

71. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2016.

72. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 8: Failure to Timely File TRI Form for Manganese for Reporting Year 2014**

73. The foregoing paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

74. During the calendar year 2014, Respondent processed manganese, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or

before July 1, 2015.

75. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2015.

76. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 9: Failure to Timely File TRI Form for Manganese for Reporting Year 2013**

77. The foregoing paragraphs 1 through 76 are incorporated by reference as if fully set forth herein.

78. During the calendar year 2013, Respondent processed manganese, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

79. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

80. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 10: Failure to Timely File TRI Form for Nickel for Reporting Year 2015**

81. The foregoing paragraphs 1 through 80 are incorporated by reference as if fully set forth herein.

82. During the calendar year 2015, Respondent processed nickel, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2016.



83. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2016.

84. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 11: Failure to Timely File TRI Form for Nickel for Reporting Year 2014**

85. The foregoing paragraphs 1 through 84 are incorporated by reference as if fully set forth herein.

86. During the calendar year 2014, Respondent processed nickel, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2015.

87. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2015.

88. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 12: Failure to Timely File TRI Form for Nickel for Reporting Year 2013**

89. The foregoing paragraphs 1 through 88 are incorporated by reference as if fully set forth herein.

90. During the calendar year 2013, Respondent processed nickel, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

91. Respondent failed to submit this form to the Administrator of EPA on or before July 1,

2014.

92. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

#### IV. CWA VIOLATIONS

##### **Count 13: Failure to Comply with 2011 MEMSGP Terms and Conditions/Discharge of Stormwater Not in Compliance with 2011 MEMSGP**

93. The foregoing paragraphs 1 through 92 are incorporated by reference as if fully set forth herein.

94. Part V.C.2. of the 2011 MEMSGP requires that the permittee shall perform good housekeeping procedures, and keep all exposed areas that are potential sources of pollution clean and orderly.

95. Part V.E. of the 2011 MEMSGP requires that all BMPs identified in the SWPPP must be maintained in effective operating condition. The Facility's SWPPP indicates that Respondent utilizes the material storage and transportation requirements listed in SPM-EL-15 (Environmental Requirements and Best Management Practices) to help control potential pollutant releases from industrial activities. In particular, SPM-EL-15 requires:

- any particulates (i.e. blast grit/dust, paint overspray) that pass through the filtration must be cleaned up immediately (§ 7.5.3);
- all material shall be stored in such a manner as to prevent spills and leaks. Should a spill or leak occur, precautions shall be taken to ensure the spilled material does not reach the receiving waters (§ 7.6.1); and
- operators shall ensure that all containers are closed and no signs of leaks are evident before transporting liquids (§ 7.6.9).

96. During the CWA Inspection, an EPA inspector observed used grit blast on the ground in various locations, including around catchbasin 005-S, within Zone 4, of the Facility. In addition, the dumpster into which metal turnings are deposited was uncovered and leaking fluids used in the metal cutting process. Also, the EPA inspector observed that tallow box overflow was leaking into a stormwater catch basin beside the manufacturing buildings. Finally, the EPA inspector observed above-ground oil storage containers on the northern drydock not in any containment.

97. Therefore, Respondent was out of compliance intermittently since at least May 2013 with Parts V.C.2. and V.E of the 2011 MEMSGP.

98. Part V.D.3.h of the 2011 MEMSGP requires that the SWPPP must contain a site map that includes locations of stormwater conveyance systems including swales, ditches, culverts, subsurface stormwater infrastructure, outfalls, including boat ramps, and an approximate outline of the area drained to each outfall.

99. The site map in the Facility's SWPPP did not accurately reflect the site and did not include all stormwater conveyance systems and outfalls.

100. Therefore, Respondent was out of compliance intermittently since at least May 2013 with Part V.D.3 of the 2011 MEMSGP.

101. Part VI. of the 2011 MEMSGP requires that the permittee conduct quarterly visual monitoring during qualifying storm events<sup>2</sup> as described in the 2011 MEMSGP.

102. Respondent failed to properly conduct quarterly visual monitoring for the third quarter

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<sup>2</sup> A qualifying storm event is either precipitation, ice or snow melt that produces a measurable discharge at an outfall that occurs at least 72 hours from a previous qualifying storm event. A grab sample must be collected within the first 60 minutes, but not more than 2.25 hours from the time stormwater began to discharge from an outfall. See Part VI.B.2 of 2011 MEMSGP.

of 2014 and the first quarter of 2017, and was therefore out of compliance with Part VI. of the 2011 MEMSGP.

103. From at least May 2013 through March 2017, each of Respondent's violations of the 2011 MEMSGP is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day on which the violation occurred or continued. In addition, from at least May 2013 through October 2016, each and every day on which Respondent discharged stormwater from the Facility in violation of the terms and conditions of the 2011 MEMSGP is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 15: Unauthorized Discharge of Process Water**

104. The foregoing paragraphs 1 through 103 are incorporated by reference as if fully set forth herein.

105. At times between January 2014 and October 2016, the Facility discharged non-stormwater process wastewater associated with vehicle pressure washing into a catch basin located just outside the eastern facing largest garage bay of the maintenance garage. These discharges contain, among other things, sediments (such as rock, sand, and dirt), metals, discarded paint, and oil and grease, which are "pollutant[s]" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

106. The catch basin described in the preceding paragraph discharges into the Kennebec River.

107. Part I.D.I of the 2011 MEMSGP provides a list of non-stormwater discharges authorized by the permit. Process wastewater associated with vehicle pressure washing is not included among such authorized discharges.

108. Therefore, these discharges of industrial process wastewater were not authorized by a

MEPDES permit, or any other state or federal permit.

109. By discharging industrial process wastewater into the Kennebec River from at least January 2014 through October 2016, without authorization under a MEPDES permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### V. TERMS OF SETTLEMENT

110. Respondent certifies that it has corrected the alleged violations cited in Paragraphs 45 through 92 of this CAFO and agrees to operate the facility in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder found at 40 C.F.R. Part 372.

111. Respondent certifies that it has corrected the alleged violations cited in Paragraphs 93 through 109 of this CAFO and agrees to operate the facility in compliance with the 2016 MEMSGP.

112. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

113. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

114. Without admitting or denying the facts and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

115. Pursuant to the relevant factors for penalties issued pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution

Prevention Act (1990) (2001), and taking into account any such matters as justice may require, EPA has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of \$355,000 to resolve the violations alleged in this matter.

116. Within thirty (30) days of the effective date of this CAFO, Respondent shall make a payment by cashier's or certified check, or by wire transfer, in the amount of \$355,000 and shall include the case name and docket number ("*In re Bath Iron Works*; Docket Nos. CWA-01-2018-0033; EPCRA-01-2018-0034") on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101  
Include the phrase "Government Lockbox 979077" on the shipping label.

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

117. In addition, at the time of payment, Respondent shall simultaneously send notice of the

payment and a copy of the check or electronic wire transfer confirmation to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

Jeffrey Kopf  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES 04-4  
Boston, MA 02109-3912

118. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any portion of the civil penalty relating to the alleged EPCRA or CWA violations is not paid when due, the penalty plus accrued interest shall be payable, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment becomes due in accordance with 31 C.F.R. § 901.9(d).

119. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all

payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

120. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

121. Respondent shall bear its own costs and attorneys' fees in this proceeding and specifically waive any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

122. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA, 42 U.S.C. §11045(c), and Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations specifically alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

123. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

124. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent violates this CAFO or continues to violate the statutes and regulations upon which the allegations in this CAFO are

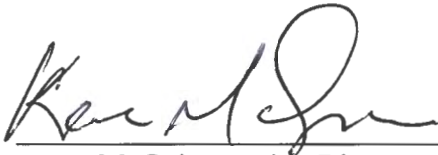


based, or for Respondent's violation of any other applicable provision of federal, state, or local law.

125. The undersigned representative of the Respondent certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

126. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of EPA and the Respondent, and approval of a Regional Judicial Officer.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Karen McGuire, Acting Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

Date: 6-18-18

FOR RESPONDENT BATH IRON WORKS



Dirk Lesko, President  
Bath Iron Works

Date: May 21, 2018

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF:	)	
	)	
Bath Iron Works	)	EPA Docket Nos.
700 Washington Street	)	CWA-01-2018-0033
Bath, ME 04530	)	EPCRA-01-2018-0034
	)	
Respondent.	)	
	)	

**FINAL ORDER**

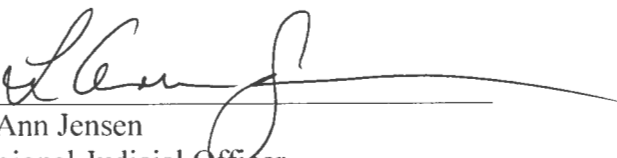
In accordance with 40 C.F.R. § 22.18(b) of the United States Environmental Protection Agency’s Consolidated Rules of Practice (CROP), the Parties to this matter have forwarded the above-captioned executed Consent Agreement to the undersigned Regional Judicial Officer for final approval. The Consent Agreement resolves Respondent’s alleged Emergency Planning and Community Right to Know Act (EPCRA) Section 313, 42 U.S.C. § 11023, and Clean Water Act Section 301, 33 U.S.C. § 1311, violations.

Under Section 22.31(b) of the CROP, 40 C.F.R. § 22.31(b), a Final Order “is effective upon filing” with the Regional Hearing Clerk. Under Clean Water Act Section 309(g)(5), 33 U.S.C. § 1319(g)(5), however, an Order “shall become final 30 days after its issuance[.]” For ease of administration of this settlement, the Parties have agreed that the “effective date” of the Consent Decree shall be the date this Final Order becomes final under Clean Water Act Section 309(g)(5), i.e., 30 days after the Final Order is issued by the undersigned Regional Judicial Officer. Accordingly, the terms of the Consent Agreement will become final and effective 30 days after the issuance of this Final Order.

Complainant shall inform the Regional Hearing Clerk in writing that the effective date for payment of the penalty amount under Paragraph 116 of the Consent Agreement shall be 30 days from the date of this Final Order.

Pursuant to 40 C.F.R. § 22.18(b), the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. The Respondent is ordered to pay a civil penalty in the amount of \$355,000 in the manner described in the Consent Agreement and this Final Order.

**SO ORDERED THIS 12th DAY OF JULY 2018.**

  
\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
 )  
**BATH IRON WORKS** )  
700 Washington Street )  
Bath, ME 04530 )  
Westminster, Massachusetts )  
 )  
Respondent. )  
 )  
Proceeding under Section 325(c) of the )  
Emergency Planning and Community )  
Right-to-Know Act, 42 U.S.C. § 11045(c) )  
and Section 309(g) of the Clean Water Act, )  
33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

Docket No: CWA-01-2018-0033  
EPCRA-01-2018-0034

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:


Original and one copy,  
hand-delivered:

Ms. Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code ORC04-6  
Boston, MA 02109-3912

Copy (Certified Mail,  
Return Receipt Requested):

Kenneth Gray, Esq.  
William Taylor, Esq.  
Pierce Atwood LLP  
254 Commercial Street  
Portland, ME 04101

Dated: July 16, 2018

  
\_\_\_\_\_  
Jeffrey Kopf, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-4  
Boston, MA 02109-3912  
Phone: 617-918-1796  
Fax: 617-918-0796