

September 23, 2024 5:29 pm
USEPA – Region II
Regional Hearing Clerk



REGION 2

NEW YORK, N.Y. 10007

September 19, 2024

Via Electronic Mail To: DennisStropko@reserve-group.com

Dennis Stropko, Environmental Health and Safety Manager
Auburn Metal Processing, LLC
6984 North Street Road
Auburn, NY 13021

Re: Consent Agreement and Final Order (CA/FO)
Auburn Metal Processing, Auburn, NY
Docket No. CWA-02-2024-3305
SPDES ID No. NYR00D692

Dear Mr. Stropko:

Enclosed please see the final signed Consent Agreement and Final Order (“CA/FO”) to resolve the Clean Water Act State Pollutant Discharge Elimination System (SPDES) violations stated in the attached CA/FO. Please pay the **\$5,800 penalty at your convenience but no later than sixty (60) calendar days from your receipt of this letter.**

Please note that upon full payment, all civil penalty claims are settled with you only for the Clean Water Act violations described in the CA/FO.

If you have any questions concerning the above, please contact Ms. Justine Modigliani, P.E., Supervisor, Compliance Section at (212) 637-4268, Modigliani.Justine@epa.gov or Murray Lantner, P.E., Environmental Engineer (212) 637-3976, Lantner.Murray@epa.gov.

Sincerely,

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division

Enclosure – Signed Final Consent Agreement and Final Order

cc: Mark Weintraub <markweintraub@reserve-group.com>
Sarah Hinchcliffe <sarahhinchcliffe@reserve-group.com>
Gary Kiefer <GaryKiefer@reserve-group.com>
Edward Hampston, Director, Bureau of Water Compliance Programs, NYSDEC
Thomas M Vigneault, NYSDEC, thomas.vigneault@dec.ny.gov
Jennifer Smith NYSDEC, jennifer.smith@dec.ny.gov
MSGP Compliance, MSGPcompliance@dec.ny.gov

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Auburn Metal Processing, LLC
6984 North Street Road
Auburn, NY 13021

SPDES/ICIS ID No. NYR00D692

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2024-3305

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1319(g).
2. The following Findings of Fact are made, and Order issued, pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, 33 U.S.C. §1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Enforcement and Compliance Assurance Division, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 C.F.R. §22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

II. FINDINGS OF FACT

4. Auburn Metal Processing, LLC ("Respondent") is an Ohio corporation with authority to do business under the laws of the State of New York, and as such, the Respondent is a person, as defined in Section 502(5) of the Act, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2.
5. The Respondent owns and operates the Auburn Metal Processing plant located at 6984 North Street Road, Auburn, NY 13021 ("Facility") and is an "owner or operator" within the meaning of

40 C.F.R. §122.2. The Respondent's Facility is permitted to discharge pollutants associated with industrial activity, including stormwater, from one outfall that discharges into Cold Spring/North Brook, which in turn flows into the Seneca River, Oswego River, and then to Lake Ontario, all waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) or 40 C.F.R. §122.2.

6. The Respondent's outfall pipe is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14), that discharges stormwater, which is a "pollutant" within the meaning of Section 502(6) of the Act, 33 U.S.C. §1362(6), into waters of the U.S. As such, pollutants have been discharged to navigable waters from a point source within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12).
7. The Respondent submitted a Notice of Intent ("NOI") on or about February 6, 2019, to gain coverage under the New York State Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP"), GP-0-17-004. This MSGP became effective on March 1, 2018, and expired on February 28, 2023. The current MSGP (GP- 0-23-001) became effective on March 8, 2023, and will expire on March 7, 2028, and Respondent has coverage under this current Permit under Permit ID no. NYR00D692.
8. On April 20, 2022, the EPA conducted a Compliance Evaluation Inspection ("CEI") of the Respondent's Facility and determined that the Respondent had failed to comply with certain conditions of the MSGP. As a result, EPA issued Administrative Compliance Order CWA-02-2022-3036 dated June 27, 2022, to account for the violations of Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342. In summary, the April 20, 2022 CEI identified that Respondent failed to comply with the MSGP GP-0-17-004 as follows:
 - a. Inadequate Good Housekeeping as required by Part II.A.2 of the MSGP;
 - b. Failed to conduct certain corrective actions as required by Part V.A and V.C of the MSGP;
 - c. Insufficient routine maintenance as required by Part II.A.3 of the MSGP;
 - d. Failed to update the 2013 Stormwater Pollution Prevention Plan as required by Parts I.D.1.a.(1), III and VII of the renewed MSGP.
9. Based on the Findings cited in the Paragraphs above, the Respondent violated Section 301 of the Act, 33 U.S.C. §1311.

III. CONCLUSIONS OF LAW AND JURISDICTION

10. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part, that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except, inter alia, in accordance with the terms and conditions of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.

11. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
12. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b). The EPA maintains concurrent enforcement authority with authorized States for addressing violations of the Act. Additionally, under this authority granted to the NYSDEC by the EPA under Section 402(b) of the Act, 33 U.S.C. §1342(b), facilities are required to obtain a SPDES permit from the NYSDEC for the discharge of pollutants from said facilities' point source(s) to a navigable water of the United States.
13. Section 402(p) of the Act, 33 U.S.C. §1342(p), sets forth the requirements for discharges of stormwater.
14. The Administrator of EPA has promulgated regulations, 40 C.F.R. §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
15. The Respondent's Facility is subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342, and Section 301(a) of the Act, 33 U.S.C. §1311(a).
16. Based upon the Findings of Fact set forth above, the Respondent operated the Facility in violation of Sections 301 and 402 of the Act.
17. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. §1319, and over the Respondent.

IV. CONSENT AGREEMENT

18. Paragraphs 1 through 17, above, are re-alleged and incorporated herein by reference.
19. The EPA and the Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
20. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and the CROP, it is hereby agreed by and between EPA and the Respondent, and the Respondent voluntarily and knowingly agrees as follows:

V. TERMS OF SETTLEMENT

21. For the purpose of this proceeding, the Respondent:

- a. For the purpose of this proceeding, the Respondent: Admits the jurisdictional allegations of this Consent Agreement and Final Order ("CA/FO");
- b. Admits the factual allegations contained herein;
- c. Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO; and
- d. Consents to the payment of the civil penalty in the amount of Five Thousand Eight Hundred Dollars (\$5,800), as stated in Section VI below.

VI. PAYMENT OF CIVIL PENALTY

22. The Respondent agrees to pay a civil penalty in the amount of **Five Thousand Eight Hundred Dollars (\$5,800)** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this consent agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk ("Filing Date").
23. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

If you prefer check payment from a U.S. Bank, here are addresses copied from links above:
Finance Center Contacts:

Primary: Craig Steffen: (513-487-2091) steffen.craig@epa.gov Secondary: Peter Hendrickson: (513-487-2086) hendrickson.peter@epa.gov

Address for Standard Delivery: U.S. Environmental Protection Agency, Cincinnati Finance Center, PO Box 979078, St. Louis, MO 63197-9000

Address for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc): U.S. Environmental Protection Agency, Government Lockbox 979078, 3180 Rider Trail S., Earth City, MO 63045

24. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name and the docket number of this Agreement, **CWA-02-2024-3305**.
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons, via electronic mail:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

Nicole Kraft, Acting Supervisor Water
Compliance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2
Kraft.Nicole@epa.gov

and

U.S. Environmental Protection Agency Cincinnati Finance Center via electronic mail to:
CINWD AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

25. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. §3717, 31 C.F.R. §901.9, and 40 C.F.R. §13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
 - b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
26. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. §13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. §13.33.
27. Allocation of Payments. Pursuant to 31 C.F.R. §901.9(f) and 40 C.F.R. §13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
28. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal or state taxes.

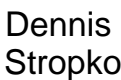
VII. GENERAL PROVISIONS

29. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A) and 40 C.F.R. §22.45. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.
30. If comments during the public comment period do not require modification or withdrawal by the EPA from this Agreement, the parties agree to submit this Agreement to the Director of Enforcement and Compliance Assurance Division ten (10) days after closure of the public comment period, with a request that it be incorporated into a final order.
31. The provisions of this CA/FO shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve the Respondent of its obligation to comply with this CA/FO.
32. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion,

memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

- 33. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.
- 34. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
- 35. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to the Act for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.
- 36. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
- 37. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

For the Respondent: Auburn Metal Processing, LLC, hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY:  Digitally signed by Dennis Stropko
DN: CN=Dennis Stropko, C=US,
E=dennisstropko@reserve-group.com
Reason: I am the author of this document
Location:
Date: 2024-07-25 09:02:11
Dennis Stropko, Environmental Health and Safety Manager
Auburn Metal Processing, LLC

DATE: July 25, 2024

For the Complainant: The United States Environmental Protection Agency

BY: _____
Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007

VIII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2, vested by authority delegated by the Administrator of the EPA and having further re-delegated such authority to the Enforcement and Compliance Assurance Division, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, EPA, Region 2, New York, New York.

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866