

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2022-0007
)	
SCH Services LLC, 262 Cora Road Rockwood, Illinois 62280)	Proceeding to Assess a Class II Civil Penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)
)	
And)	
)	
Cora Terminal LLC 262 Cora Road Rockwood, Illinois 62280)	
)	
Respondents.)	
)	

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. Respondents are SCH Services, LLC, a Kentucky limited liability company registered in Franklin, TN, and Cora Terminal LLC, a Delaware limited liability company registered in Pittsburg, KS, both companies doing business in Rockwood, IL.

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. Respondents consent to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, their right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); their right to appellate review under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); their right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and their right to appeal this CAFO. Respondents also consent to the issuance of this CAFO without further adjudication.

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 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).

11. 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).

12. 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).

13. 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).

14. 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).

15. 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.

16. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to navigable waters. Any such discharge is subject to the specific terms and conditions

prescribed in the applicable permit, and a violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

17. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Illinois requested approval from EPA to administer its own permit program for discharges into navigable waters within Illinois, and such approval was granted by EPA on October 23, 1977, 42 Fed. Reg. 58,566 (Nov. 10. 1977). Therefore, pursuant to the State’s permit program, the Illinois Environmental Protection Agency (IEPA) has issued IL NPDES permits.

18. 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

19. Respondents are a joint venture of limited liability companies and therefore are “persons” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

20. At all times relevant to this Order, Respondents owned and operated the Cora Terminal, a multiple unit train and bulk barge terminal with massive outside storage, located at 262 Cora Road, Rockwood, IL 62280 (“facility”).

21. Illinois EPA issued a permit IL0060674 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, to Watco Transloading LLC for discharge of, among other pollutants, chloride, sulfate, calcium, iron, magnesium, and Total Suspended Solids (TSS) from Outfall 001 at the facility to the Mississippi River.

22. In an undated letter to Illinois EPA, Respondent SCH Services requested the Permit be transferred to Cora Terminal LLC.

23. TSS is a “pollutant” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6), because it includes one or more of the following: dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste.

24. The Mississippi River is a navigable water as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. Because Respondents owned and operated a facility with outfalls that acted as a point source for the discharge of pollutants to navigable waters, Respondents 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.

26. On August 19 and 20, 2019, EPA inspected Respondents’ facility as authorized by 33 U.S.C. § 1318(a).

27. Following the inspection, a review of Enforcement and Compliance History Online (ECHO),¹ and a review of Respondents’ Discharge Monitoring Reports (DMRs) and other records, EPA has determined that Respondents violated the following requirements of the Permit and the CWA at the facility: (a) unauthorized discharges of pollutants to Degognia Creek for a period of ten years in violation of 33 U.S.C. 1311(a); (b) exceeded the Permit’s 30-day average effluent limitation of 35 mg/l for TSS (15) fifteen times during the period of May 2017

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

to January 2020; (c) exceeded the Permit's daily maximum concentration limitation of 70 mg/l for TSS (20) twenty times during the period of May 2017 to January 2020; and (d) failed to use settling aids to meet the suspended solids effluent standards as required by Special Condition 24 of the Permit.

Counts 1: Unlawful Discharge of Pollutants to Degognia Creek

28. The statements in Paragraphs 1 through 27 are hereby incorporated by reference as if set forth in full.

29. During the inspection of the facility on August 19 and 20 of 2019, EPA authorized representatives observed that the pipe for Outfall No. 001 was broken and discharging to Degognia Creek.

30. During the inspection of the facility on August 19, 2019, an employee of Respondents informed EPA that the pipe for Outfall No. 001 discharges to Degognia Creek due to a break in the pipe, which occurred around ten years ago i.e., in 2009.

31. EPA studied Degognia Creek and observed that the waterbody had a volume, frequency, and duration of flow sufficient to create a bed and banks as well as a line on the shore established by the fluctuations of water and indicated by a clear, natural line impressed on the bank, shelving, changes in the character of soil, and destruction of terrestrial vegetation.

32. Degognia Creek contributes flow directly to the Mississippi River.

33. Respondents assert that the pipe for Outfall No. 001 is fixed as of Sept. 21, 2019.

34. Beginning prior to 2015 and continuing until Sept. 21, 2019, Respondents discharged pollutants, including TSS, from Outfall No. 001 of the facility to Degognia Creek.

35. Specifically, Respondents discharged industrial wastewater containing pollutants from Outfall No. 001 of the facility to Degognia Creek in at least the following months:

- a. May 2017 and June 2017
- b. February 2018 through May 2018
- c. July 2018 through December 2018
- d. January 2019 through April 2019
- e. June 2019
- f. August 2019 through November 2019
- g. January 2020

36. Degognia Creek is a navigable water as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

37. Outfall No. 001 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).

38. Respondents’ addition of pollutants, including TSS, from Outfall 001 to Degognia Creek constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

39. At no time relevant to the discharge described in Paragraphs 34 and 35 did Respondents have or apply for a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, to discharge any pollutant to Degognia Creek.

40. Therefore, Respondents are persons who discharged pollutants from a point source to navigable waters in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Counts 2-12: Exceedances of the Permit’s 30-day Average Maximum Concentration Limit

for TSS

41. The statements in Paragraphs 1 through 40 are hereby incorporated by reference as if set forth in full.

42. For effluent discharged from Outfall 001, the Permit provides a 30-day average maximum concentration limit of 35 milligrams per liter (“mg/l”) for TSS.
43. Special Condition 4 of the Permit requires Respondents to submit monthly DMRs for Outfall 001 to Illinois EPA.
44. Respondents discharged effluent with a 30-day average TSS concentration of 85.4 mg/l through Outfall 001 in February 2018.
45. Respondents discharged effluent with a 30-day average TSS concentration of 69.5 mg/l Outfall 001 in March 2018.
46. Respondents discharged effluent with a 30-day average TSS concentration of 96 mg/l through Outfall 001 in April 2018.
47. Respondents discharged effluent with a 30-day average TSS concentration of 86.4 mg/l through Outfall 001 in September 2018.
48. Respondents discharged effluent with a 30-day average TSS concentration of 39 mg/l through Outfall 001 in November 2018.
49. Respondents discharged effluent with a 30-day average TSS concentration of 70 mg/l through Outfall 001 in December 2018.
50. Respondents discharged effluent with a 30-day average TSS concentration of 180 mg/l through Outfall 001 in January 2019.
51. Respondents discharged effluent with a 30-day average TSS concentration of 235 mg/l through Outfall 001 in February 2019.
52. Respondents discharged effluent with a 30-day average TSS concentration of 76.5 mg/l through Outfall 001 in March 2019.

53. Respondents discharged effluent with a 30-day average TSS concentration of 58.5 mg/l through Outfall 001 in January 2020.

54. Each month Respondents discharged TSS from Outfall 001 in excess of the 30-day average maximum concentration limit of 35 mg/l, Respondents violated the Permit, and thereby violated Section 301 of the CWA, 33 U.S.C. § 1311.

Count 13: Exceedances of the Permit's Daily Maximum Concentration Limit for TSS

55. The statements in Paragraphs 1 through 54 are hereby incorporated by reference as if set forth in full.

56. For effluent discharged from Outfall 001, the Permit provides a daily maximum concentration limit of 70 mg/l for TSS.

57. Respondents discharged effluent with a TSS daily concentration of 290 mg/l from Outfall 001 in May 2017.

58. Each day Respondents discharged TSS from Outfall 001 in excess of the daily maximum concentration limit of 70 mg/l, Respondents violated the Permit, and thereby violated Section 301 of the CWA, 33 U.S.C. § 1311.

Count 14: Failure to Use Settling Aids as required by the Permit

59. The statements in Paragraphs 1 through 58 are hereby incorporated by reference as if set forth in full.

60. Special Condition 24 of the Permit requires Respondents to use settling aids to meet the suspended solids effluent standards in the Permit.

61. As of EPA's inspection on August 19 and 20, 2019, Respondents had not added any settling aids to the retention pond to meet the suspended solids effluent standards since August 2014.

62. As described in Paragraphs 1 through 58 above, Respondents failed to meet the suspended solids effluent standards in the Permit on multiple occasions since August 2014.

63. Respondents' failure to use settling aids to meet the suspended solids effluent standards in the Permit is a violation of the Permit and thereby a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

64. 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 \$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.

65. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondents' 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 \$115,000.

66. Within 90 days after the effective date of this CAFO, Respondents must pay the \$115,000 civil penalty with interest as follows:

<u>Installment</u>	<u>Due Date</u>	<u>Payment Amount</u>	<u>Principal</u>	<u>Interest</u>
Payment #1	90 days from effective date of CAFO	\$115,287.50	\$115,000	\$287.50

And 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.

67. A transmittal letter, stating Respondents' name, complete address, and the case docket number must accompany the payment. Respondents 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

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

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

69. If Respondents do 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. Respondents acknowledge that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

70. Respondents 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, Respondents must pay the United States' attorneys fees and costs for collection proceedings, and Respondents 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

71. The parties consent to service of this CAFO by email at the following valid email addresses: urban.amanda@epa.gov (for Complainant) and Respondents' Registered Agent or Attorney: gutton@fbtlaw.com (for Respondent).

72. Full payment of the penalty as described in Paragraphs 65 and 66 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.

73. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in Paragraphs 65 and 66 and full compliance with this CAFO shall resolve only Respondents' liability for only federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for only the particular violations alleged in this CAFO.

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

75. Respondents certify that they are complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

76. When final and effective, this CAFO is a "final order" for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, and 22.45, and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

77. The terms of this CAFO bind Respondents and their successors and assigns.

78. 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.

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

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

81. This Consent Agreement proposes issuance of a civil penalty order pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g). Therefore, it is subject to the procedural requirements of Section 309(g) of the CWA and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties), 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. § 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. §

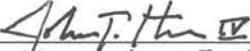
22.45, and 40 C.F.R. Part 22 for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

82. Unless a commenter files a request for hearing pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), or a petition for judicial review pursuant to Section 309(g)(8) of the CWA, 33 U.S.C. § 1319(g)(8), this CAFO is effective 30 days following issuance, which is the date the CAFO has been signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:
SCH Services LLC and Cora Terminal LLC
262 Cora Road
Rockwood, Illinois 62280

Docket No. CWA-05-2022-0007

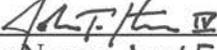
Cora Terminal LLC, Respondent



Signatory Name: JOHN F. HUNT II
Signatory Title: VP
Cora Terminal LLC

6/20/22
Date

SCH Services LLC, Respondent



Signatory Name: JOHN F. HUNT II
Signatory Title: VP
SCH Services LLC

6/20/22
Date

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.07.12
11:23:32 -05'00'

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

Date

In the Matter of:
SCH Services LLC, Cora Terminal LLC
Docket No. CWA-05-2022-0007

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

Date: _____



Consent Agreement and Final Order
In the Matter of: SCH Services LLC, Cora Terminal LLC
Docket Number. CWA-05-2022-0007

Certificate of Service

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CWA-05-2022-0007, which will be filed and effective on _____, in the following manner to the following addresses:

Copy by e-mail to Respondent: Gregory Dutton
gdutton@fbtlaw.com

Copy by e-mail to Attorney for Complainant: Amanda Urban
urban.amanda@epa.gov

Copy by e-mail to Attorney for Respondent: Gregory Dutton
gdutton@fbtlaw.com

Copy by e-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____

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