

(“NPDES”) permit PA0000566 issued to Defendant by PADEP pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and Section 307 of the PCSL, 35 Pa. Cons. Stat.. § 691.307.

2. Plaintiffs seek permanent injunctive relief and the assessment of civil penalties against Defendant to address its illegal discharges of pollutants, as authorized by Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Sections 601 and 605 of the PCSL, 35 Pa. Cons. Stat. §§ 691.601 and 691.605.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

4. This Court has supplemental jurisdiction over the PADEP state law claims alleged herein pursuant to 28 U.S.C. § 1367(a) because the state claims are so related to the federal claims as to form part of the same case or controversy.

5. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), as well as Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), because it is the judicial district in which Defendant is doing business and in which the violations alleged in the Complaint occurred.

6. As signatory of this Complaint, PADEP has actual notice of commencement of this action as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

7. Libertas Copper is a Delaware Limited Liability Company that owns and operates a copper smelting facility (“Facility”) with its principal place of business at 100 Washington Street, Leetsdale, Pennsylvania 15056.

STATUTORY AND REGULATORY BACKGROUND

Clean Water Act

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person,” to waters of the United States, except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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, *inter alia*, chemical and industrial waste.

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

12. “Waters of the United States” has been defined to include, *inter alia*, “[a]ll waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce” *See, e.g.*, 40 C.F.R. § 122.2 (1993); 40 C.F.R. § 120.2 (2020).

13. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.”

14. Section 402 of the CWA, 33 U.S.C. § 1342, provides that the permit-issuing authority may issue an NPDES permit that authorizes the discharge of any pollutant to waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

15. At all relevant times, PADEP has been authorized by EPA pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer an NPDES permit program for regulating the discharges of pollutants to navigable waters within the jurisdiction of the Commonwealth.

16. Section 402(a)(2) of the CWA, 33 U.S.C. § 1342(a)(2), directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to assure compliance with the requirements of the CWA. 33 U.S.C. § 1342(a)(2); *see also* 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents that are discharged from point sources. Pursuant to Section 402(a)(2), the regulatory authority may prescribe such conditions and limitations.

17. Section 301(b) of the CWA, 33 U.S.C. § 1311(b), directs the Administrator to set effluent limitations for categories and classes of point sources based on the best practicable control technology or the best available technology economically achievable for such category or class. In 1983, EPA set effluent limitations guidelines (“ELGs”) for discharges from copper-forming point sources. 48 Fed. Reg. 36,942 (Aug. 15, 1983). EPA amended the regulation in 1986. *See* 40 C.F.R. Part 468; 51 Fed. Reg. 7,568 (Mar. 5, 1986). In 1985, EPA set ELGs for the metal molding and casting industry. *See* 40 C.F.R. Part 464; 50 Fed. Reg. 45,212 (Oct. 30, 1985). The ELGs prescribe “maximum for any 1 day” and “maximum for monthly average” numeric effluent limitations for copper, chromium, nickel, oil and grease, lead, total suspended solids (“TSS”), pH, and zinc. Discharges with a pH above or below the range set forth in the applicable ELGs (within the range of 7.5 to 10.0 at all times) are violations of the daily maximum or daily minimum limitations in Defendant’s NPDES permit. Pursuant to Section 301(b), the regulatory authority may set such effluent limitations.

18. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes civil actions for appropriate relief, including a permanent or temporary injunction, against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation.

20. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note); the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note; and 40 C.F.R. § 19.4 (Feb. 6, 2019), EPA may seek civil penalties of up to \$37,500 per day for each violation that occurred between January 12, 2009, and November 2, 2015, and up to \$54,833 per day for each violation that occurred after November 2, 2015.

21. The U.S. Attorney General and the Department of Justice have authority to bring this action on behalf of EPA pursuant to Section 506 of the CWA, 33 U.S.C. § 1366.

Pennsylvania Clean Streams Law and Regulations

22. Sections 301 and 307 of the PCSL, 35 Pa. Cons. Stat. §§ 691.301 and 691.307, prohibit the discharge by any person of any industrial wastes into waters of the Commonwealth of Pennsylvania, except, *inter alia*, in compliance with a permit issued by PADEP pursuant to Section 307 of the PCSL, 35 Pa. Cons. Stat. § 691.307, and PADEP's implementing regulations adopted by the Pennsylvania Environmental Quality Board ("EQB"). *See* 25 Pa. Code Chapters 91, 92a, 93, 95, and 96.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.