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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) **Docket No. CWA-05-2024-0006**
)
Powers Paint Shop, Inc.) **Proceeding to Assess a Class II Civil**
1065 Dieckman Street) **Penalty under Section 309(g) of the Clean**
Woodstock, IL 60098) **Water Act, 33 U.S.C. § 1319(g)**
)
Respondent.)
)
_____)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Powers Paint Shop, Inc. (Powers Paint Shop), a corporation in Woodstock, Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 307 of the Clean Water Act, 33 U.S.C. § 1317, provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (“POTW”).

10. Pursuant to, *inter alia*, Section 307 of the Clean Water Act, 33 U.S.C. § 1317, the Administrator published “General Pretreatment Regulations for Existing and New Sources” (General Pretreatment Regulations) on January 28, 1981, codified at 40 C.F.R. Part 403. The requirements of 40 C.F.R. Part 403 became effective three years from the date of promulgation, i.e., January 29, 1984. These regulations control the introduction of pollutants by Industrial Users into POTWs which may Pass Through or Interfere with treatment processes of such treatment works, or which may contaminate sewage sludge.

11. Pursuant to 40 C.F.R. § 403.1(b)(1), the General Pretreatment Regulations apply to pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or otherwise introduced into POTWs.

12. Pursuant to 40 C.F.R. § 403.1(b)(4), the General Pretreatment Regulations apply to any new or existing source subject to Pretreatment Standards.

13. Pursuant to, *inter alia*, Sections 307(b) and (c) of the Clean Water Act, 33 U.S.C. § 1317(b) and (c), respectively, EPA published regulations for the Metal Finishing Category on July 15, 1983, codified at 40 C.F.R. Part 433. These regulations, which became effective on August 29, 1983, establish, among other things, New Source Performance Standards and Pretreatment Standards for Existing Sources (PSES) subject to the Metal Finishing Category. The new source date for indirect discharges subject to the Metal Finishing Category is August 31, 1982.

14. Pursuant to 40 C.F.R. § 433.10(a), the Metal Finishing Category applies to plants that perform any of the six listed metal finishing operations [Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating, and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacture] on any basis material and the discharges from those operations, and also to discharges from any of the 40 listed process operations (e.g., cleaning, machining, welding, etc.).

15. Pursuant to 40 C.F.R. § 433.15(a), any existing source subject to the Metal Finishing Category that introduces pollutants into a POTW must comply with 40 C.F.R. Part 403 and achieve specified PSES for cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide, and total toxic organics (TTO).

16. 40 C.F.R. § 403.12(b) requires existing Industrial Users subject to a categorical Pretreatment Standard to submit to the Control Authority a baseline monitoring report (BMR) within 180 days after the effective date of a categorical Pretreatment Standard. The baseline monitoring report must contain the information listed in 40 C.F.R. § 403.12(b)(1)-(7), including a measurement of the regulated pollutants in the discharge from each regulated process [40 C.F.R. § 403.12(b)(5)].

17. 40 C.F.R. § 403.12(e) requires Industrial Users subject to categorical Pretreatment Standards to submit periodic compliance monitoring reports to the Control Authority, due June and December. In the case of Industrial Users that fall within the Metal Finishing Category, the compliance monitoring reports must indicate the concentration of regulated pollutants in the effluent, including cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide and TTO.

18. 40 C.F.R. § 403.12(g)(5) requires Industrial Users, including those subject to Categorical Pretreatment Standards, to perform all required analyses in accordance with procedures established by the Administrator pursuant to Section 304(h) of the CWA, 33 U.S.C. § 1314(h), and contained in 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator.

19. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), states that after the effective date of any ... Pretreatment Standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such ... Pretreatment Standard.

20. 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 307(d) of the CWA, 33 U.S.C. § 1317(d).

21. 40 C.F.R. § 403.3(c) defines the term “Approval Authority” as the appropriate EPA Regional Administrator for a state that lacks an approved State pretreatment program.

22. 40 C.F.R. § 403.3(f)(2) defines “Control Authority” as the Approval Authority if the POTW's Pretreatment Program Submission has not been approved by the Approval Authority.

23. 40 C.F.R. § 403.3(i) defines “Indirect Discharge” or “Discharge” as the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c), or (d) of the Act.

24. 40 C.F.R. § 403.3(j) defines “Industrial User” as a source of Indirect Discharge.

25. 40 C.F.R. § 403.3(m)(1) defines “New Source” as any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section (new source date).

26. 40 C.F.R. § 403.3(l) defines “Pretreatment Standard” as any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act, 33 U.S.C. § 1317(b) and (c), which applies to Industrial Uses.

27. 40 C.F.R. § 403.3(q) defines “Publicly Owned Treatment Works” or “POTW, as a treatment works, as defined in Section 212 of the CWA, 33 U.S.C. § 1292(2), that is owned by a State, Tribe, or a municipality (as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4)). Pursuant to 40 C.F.R. § 403.3(q), the definition of POTWs includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as

defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4), that has jurisdiction over indirect and direct discharges to such a treatment works.

28. 40 C.F.R. § 403.3(v)(1)(ii) defines Significant Industrial User (SIU) as an Industrial User subject to Categorical Pretreatment Standards, which includes the Metal Finishing Point Source Category, Metal Finishing Subcategory, found in 40 CFR §§ 433.10 through 433.17.

Factual Allegations

29. Respondent is a corporation, so it is a “person,” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

30. At all times relevant to this Order, Respondent owned and operated the Powers Paint Shop, a metal finishing facility, which includes an iron phosphate coating operation, located in Woodstock, Illinois (Facility).

31. The Facility discharges wastewater from its iron phosphate coating operation, which falls within one of the six metal finishing operations listed in 40 C.F.R. Part 433, Subpart A at § 433.10(a), to the City of Woodstock POTW.

32. The iron phosphate coating operation at the Facility was constructed in 1970, before the August 31, 1982, new source date for indirect dischargers subject to the Metal Finishing Category. Accordingly, the Facility is not a New Source per 40 C.F.R. § 403.3(m)(1) and is thus an Existing Source.

33. Respondent is a source of Indirect Discharge, as defined in 40 C.F.R. § 403.3(i), and thus an Industrial User, as defined in 40 C.F.R. § 403.3(j), subject to the General Pretreatment Regulations at 40 C.F.R. § 403. Respondent is also a SIU, subject to the Metal Finishing Categorical Pretreatment Standards for Existing Sources at 40 C.F.R. § 433.

34. As an SUI subject to the Metal Finishing Categorical Pretreatment Standards for Existing Sources at 40 C.F.R. § 433, Respondent is required to achieve the PSES for cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide, and total toxic organics (TTO) specified in 40 CFR § 433.15(a).

35. Illinois does not have an approved State Pretreatment Program. Under 40 C.F.R. § 403.3(c), EPA is therefore the “Approval Authority” in the State of Illinois.

36. The City of Woodstock owns and operates the POTW (“Woodstock POTW”) to which the Facility discharges and has not received approval to implement a Pretreatment Program. Therefore, under 40 C.F.R. § 403.3(f), EPA is the “Control Authority.”

37. On July 29, 2021, EPA conducted an inspection to evaluate Respondent’s compliance, at the Facility, with Clean Water Act pretreatment requirements.

Count 1: Violations of Pretreatment Regulations

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

39. Pursuant to 40 C.F.R Part 403.12, Respondent was required to submit a BMR to EPA within 180 days after the effective date of the Metal Finishing Categorical Pretreatment Standards, i.e., by February 25, 1984.

40. Respondent did not submit a BMR to EPA until August 9, 2022, and thus failed to provide a BMR by the due date.

41. Respondent’s failure to provide a BMR by the due date is in violation of 40 C.F.R Part 403.12(b) and Section 307(d) of the CWA Act, 33 U.S.C. § 1317(d).

42. Each day past the due date that Respondent failed to provide a BMR to EPA constituted a single, continuing violation.

43. Pursuant to 40 C.F.R Part 403.12, Respondent is required monitor its discharge from its iron phosphate coating operation to the Woodstock POTW for cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide and TTO and submit periodic compliance monitoring reports to EPA, each June and December, indicating the concentration of these pollutants in its discharge.

44. Respondent did not monitor its discharge from its iron phosphate coating operation to the Woodstock POTW and submit a periodic compliance monitoring report to EPA in December 2018, June 2019, December 2019, June 2020, December 2020, June 2021, and December 2021.

45. Respondent's failure to monitor its discharge from its iron phosphate coating operation to the Woodstock POTW and submit a periodic compliance monitoring report to EPA in December 2018 and in June and December from 2019 through 2021, is in violation of 40 C.F.R Part 403.12 and Section 307(d) of the CWA Act, 33 U.S.C. § 1317(d).

46. Each semi-annual period that Respondent failed to conduct monitoring and submit a compliance monitoring report to EPA constituted a separate violation.

Count 2: Metal Finishing Categorical Pretreatment Standards Violations

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

48. Pursuant to 40 CFR § 433.15(a), Respondent is required to limit the concentration of zinc in its discharge from its iron phosphate coating operation to the Woodstock POTW to a maximum for any one day of 2.1 mg/l and monthly average of 1.48 mg/l.

49. On June 6, 2022, June 13, 2022, June 20, 2022, and June 27, 2022, Respondent sampled its discharge from its iron phosphate coating operation to the Woodstock POTW and the sample results were 3.90 mg/L, 3.00 mg/L, 7.60 mg/L, and 4.71 mg/L, respectively. The results thus showed concentrations of zinc above the maximum limit for any one day of 2.1 mg/l, in violation of 40 CFR Part 433.15(a) and Section 307(d) of the CWA Act, 33 U.S.C. § 1317(d).

50. The average of the zinc concentration from the four sampling events in June 2022 referenced in Paragraph 49 above was 4.80 mg/L, which is above the monthly average limit of 1.48 mg/l, in violation of 40 CFR Part 433.15(a) and Section 307(d) of the CWA Act, 33 U.S.C. § 1317(d).

Civil Penalty

51. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$25,847 per day of violation up to a total of \$323,081, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after January 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

52. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$37,800.

53. Within 30 days after the effective date of this CAFO, Respondent must pay the \$37,800 civil penalty by 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

The check must note Respondent's name and the docket number of this CAFO.

54. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5hearingclerk@epa.gov

Joan Rogers (ECW-15J)
U.S. Environmental Protection Agency
rogers.joan@epa.gov

Hala Kuss (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
kuss.hala@epa.gov

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

56. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

57. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must

pay the United States' attorneys' fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

General Provisions

58. The parties consent to service of this CAFO by email at the following valid email addresses: kuss.hala@epa.gov (for Complainant) and sales@powerspaint.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

59. Full payment of the penalty as described in paragraphs 52 and 53 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.

60. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 52 and 53 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

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

62. Respondent certifies that it is complying with Section 307 of the CWA, 33 U.S.C. § 1317.

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

64. 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.

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

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

67. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

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

69. 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 CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:

Powers Paint Shop

Docket No. CWA-05-2024-0006

Powers Paint Shop, Respondent

Daniel Powers
Daniel Powers
President
Powers Paint Shop

October 30, 2023
Date

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by
MICHAEL HARRIS
Date: 2023.11.22
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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

**In the Matter of:
Powers Paint Shop
Docket No. CWA-05-2024-0006**

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 CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

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