

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
 )  
Hayes Business Group, LLC ) Docket No. CWA-07-2011-0093  
d/b/a Allan Industrial Coatings )  
 ) FINDINGS OF VIOLATION  
 ) AND ORDER FOR COMPLIANCE  
Respondent. )  
 )  
 )  
Proceeding under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )  
\_\_\_\_\_ )

**I. Statutory Authority**

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), by Section 309(a)(3) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(a)(3). These authorities have been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region 7.

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits discharge of pollutants from a point source into navigable waters of the United States, except in compliance with, inter alia, Section 307 of the Act, 33 U.S.C. § 1317, and a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 402 provides that pollutants may be discharged into navigable waters of the United States only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that section. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (“POTW”).

3. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Iowa pursuant to Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and the implementing regulations. The EPA retains concurrent enforcement authority with authorized state NPDES and Pretreatment programs under Section 309 of the CWA, 33 U.S.C. § 1319.

## **II. General Factual Allegations**

4. The city of Allison, Iowa (hereafter "City") owns and operates a POTW in Butler County, Iowa. The City's POTW includes a wastewater treatment plant ("WWTP") and sewage collection system, which receive wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent's facility.

5. The City's POTW discharges to Feddeke Creek and the West Fork of the Cedar River.

6. The City's POTW is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as these terms are defined by Sections 502(14), (12) and (7) of the CWA, respectively, 33 U.S.C. § 1362(14), (12) and (7).

7. Hayes Business Group, LLC, d/b/a Allan Industrial Coatings ("Respondent"), is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), incorporated and registered to do business in the state of Iowa. Respondent's registered agent for service in Iowa is William Sidney Smith, 604 Locust, Ste.1000, Des Moines, Iowa, 50309. Hayes Business Group, LLC, succeeded control of the business from Allan, Inc., in 2007.

8. At all times relevant, Respondent owned and operated a facility located at 22191 Highway 3, Allison, Iowa 50602-0798 (the "facility"), which performs phosphate conversion coating prior to powder coating.

9. Respondent discharges wastewater from its facility into the City's POTW, and is therefore an "Industrial User" as defined at 40 C.F.R. § 403.3(j).

10. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

11. Phosphate conversion coating is a regulated process under the federal Categorical Standards as defined by the General Pretreatment Regulations at 40 C.F.R. § 403.6.

12. Respondent is subject to the Metal Finishing Point Source Category, 40 C.F.R. Part 433. Specifically, Respondent is subject to the Metal Finishing categorical Pretreatment Standards for New Sources ("PSNS") at 40 C.F.R. § 433.17.

13. On or about June 1, 1998, the IDNR issued the City NPDES Permit Number IA0042731 pursuant to Section 402 of the Act, 33 U.S.C. § 1342, which was scheduled to expire on June 1, 2003 (hereafter, "NPDES permit"). The City submitted an application for renewal of its permit, and the permit has been administratively extended pending reissuance by the IDNR.

14. The City's NPDES permit contains conditions and limitations for discharges of effluent from the City's POTW.

15. Respondent's process wastewater contains "pollutants" as defined by Section 502(6) of the CWA, including, but not limited to cadmium, chromium, copper, cyanide, lead, nickel, silver, zinc and total toxic organics ("TTO"), which are regulated under 40 C.F.R. § 433.17.

16. The IDNR incorporated "Industrial Contributor" Pretreatment effluent limitations and monitoring requirements for Respondent's discharge to the City's POTW into the NPDES permit based on the limitations set forth in 40 C.F.R. § 433.17, including but not limited to the following:

- a) Zinc – 30-day average limitation of 1.4800 mg/L and a daily maximum limitation of 2.6100 mg/L, with a 24-hour composite sample to be taken no less frequently than one (1) time per week;
- b) Other metals, including Cadmium, Chromium, Copper, Lead, Nickel and Silver – 30-day and daily maximum limitations with a 24-hour composite sample to be taken no less frequently than one (1) time per week; and
- c) Samples and measurements taken must be representative of the volume and nature of the monitored wastewater.

17. Treatment Agreement limitations and conditions for Respondent incorporated into the Pretreatment provisions of NPDES Permit Number IA0042731 are Pretreatment requirements as defined by 40 C.F.R. 403.3(t) and Pretreatment Standards pursuant to 40 C.F.R. § 403.5(d).

18. On or about March 8 through 11, 2010, the EPA performed an inspection of the City's POTW and of discharges from Allan Industrial Coatings to the POTW ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). During the Inspection, the EPA inspector reviewed documents, including Monthly Operating Reports ("MORs") for the City and Respondent, observed and documented Respondent's sampling and analysis procedures, and collected effluent samples, which were later analyzed.

19. On or about December 21, 2010, the EPA issued requests for information to Allan Industrial Coatings pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, the Respondent's facilities, production, wastewater treatment processes and discharges to the City's POTW. On or about February 8, 2011, the EPA received Respondent's reply to the Information Request, hereafter referred to as the "Respondent's Information Request Response."

**III. Findings of Violation**

20. The facts stated in Paragraphs 4 through 20 above, are hereby incorporated by reference.

Failure to Comply with Pretreatment Standards

21. Based on information and data collected during the Inspection and provided in the Respondent's Information Request Responses, Respondent violated the 30-day average limitation for zinc set forth in 40 C.F.R. § 433.17 and the Pretreatment provisions of NPDES Permit Number IA0042731, during at least the following months:

Month of Violation	Zinc 30-Day Average - 1.48 mg/L
October 2008	2.26
November 2008	1.64
December 2008	8.02
January 2009	4.82
February 2009	5.58
March 2009	7.18
January 2010	1.73
February 2010	1.72
March 2010	1.67
March 2011	2.41
April 2011	2.60

22. Based on information and data collected during the Inspection and provided in the Respondent's Information Request Responses, Respondent violated the daily maximum limitation for zinc set forth in 40 C.F.R. § 433.17 and the Pretreatment provisions of NPDES Permit Number IA0042731, on at least the following dates:

Day of Violation	Zinc Daily Maximum - 2.61 mg/L
10/14/2008	3.21
11/25/2008	3.07
12/02/2008	20.9
12/16/2008	3.32
12/23/2008	5.59
12/30/2008	12.5
1/13/2009	3.84
2/10/2009	9.30
2/25/2009	9.32
3/04/2009	3.73
3/10/2009	16.6
9/16/2009	3.19
3/30/2010	2.91
7/14/2010	2.70
3/22/2011	4.68
4/4/2011	3.05
4/26/2011	4.74

23. Respondent's discharges of zinc in excess of the PSNS limitations at 40 C.F.R. § 433.17 and as set forth in the NPDES Permit are violations of Pretreatment Standards and violations of the Pretreatment provisions of NPDES Permit Number IA0042731, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

#### Failure to Comply with Metals Sampling Requirements

24. Based on information and data collected during the Inspection and provided in the Respondent's Information Request Responses, at the time of the EPA Inspection, Respondent violated Pretreatment sampling and analysis requirements for metals contained in the NPDES permit, by taking grab samples to determine compliance with metals limits, including Cadmium, Chromium, Copper, Lead, Nickel, Silver and Zinc, instead of 24-hour composite samples, as required by the Pretreatment provisions of the NPDES permit.

25. The EPA Inspector further observed that Respondent's structured routine for sampling (Wednesdays, and occasionally Tuesdays or Thursdays) might not provide representative sampling of the daily variability in discharges from Respondent's facility, as required by the Pretreatment provisions of the NPDES permit.

26. Respondent's failure to properly sample and analyze metals discharges from its facility to the City's POTW is a violation of the applicable Pretreatment provisions of the NPDES permit, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

#### IV. Order for Compliance

27. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below.

28. Within thirty (30) days of the effective date of this Order, Respondent shall take all actions necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with 40 C.F.R. Parts 403 and 433, and the Pretreatment requirements in the NPDES permit, including but not limited to:

- a) compliance with PSNS limitations; and
- b) compliance with metals sampling and analysis procedures, including 24-hour composite sampling that is representative of the discharge, as required by the Pretreatment requirements of the NPDES permit.

29. Within forty-five (45) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein, including:

- a) an acknowledgement of receipt of this Order;
- b) the name of a contact person for purposes of communications regarding this Order;
- c) a copy of MORs submitted to the IDNR from June 2011 through the date of your response;
- d) a description of all activities initiated to date to achieve compliance with the Pretreatment limitations and to ensure all sampling and analysis is in compliance with the Pretreatment requirements of the NPDES permit; and
- e) an explanation of how corrective measures will be implemented in the future and why such actions are anticipated to be sufficient to prevent recurrence of the violations identified in the Order or similar violations.

30. In the event that Respondent believes correction of the violations cited herein is not possible prior to submission of its report pursuant to Paragraph 29, above, Respondent shall include in its report a comprehensive written Plan for the correction of any remaining violations. Such Plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the remaining violations. The Plan shall include a detailed Schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

31. If submitted, the EPA will review the Plan and Schedule submitted by Respondent pursuant to Paragraph 30. After consultation with the IDNR, the EPA shall approve the Schedule or require modification and resubmission of Plan and/or Schedule, or a portion thereof, pursuant to Paragraph 32, below. Upon approval, the Schedule shall be deemed incorporated into and become enforceable under this Order and Respondent shall immediately implement compliance measures according to the approved Schedule.

32. If required by the EPA pursuant to Paragraph 31, above, the Respondent shall within forty-five (45) days of receipt of any written comments from EPA regarding the Plan and/or Schedule, make modifications and changes to it as directed by EPA, and resubmit the Plan and/or Schedule to the EPA, with a copy to the IDNR. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

33. Review and comment on the Plan and approval of the Schedule by the EPA does not relieve Respondent of the responsibility to comply with applicable Pretreatment standards, the Pretreatment requirements of the NPDES permit, the CWA, applicable State law, or this Order.

### Reporting

34. Beginning January 28, 2012, Respondent shall submit to EPA on a quarterly basis (January 28, April 28, July 28 and October 28), until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 44, below, the following information:

- a) a description of activities completed under this Order within the reporting period, including, if applicable, a report of activities to implement the provisions of the approved Plan; and
- b) a copy of MORs submitted to the IDNR within the reporting period.

### Certification

35. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

### Submittals

36. All documents required by this Order to be submitted to the EPA shall be hand delivered or sent by certified mail, return receipt requested, to the following:

Kimberly Willis  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

37. All documents required by this Order to be submitted to the IDNR shall be hand delivered or sent by certified mail, return receipt requested, to the following:

Dennis Ostwinkle, Supervisor  
IDNR Field Office #6  
1023 West Madison Street  
Washington, Iowa 52353-1623

and

Jeff Vansteenburgh, Supervisor  
IDNR Field Office #2  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401

## **V. General Provisions**

### **Effect of Compliance with the Terms of This Order**

38. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

39. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state, and federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

40. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et. seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

### **Access and Requests for Information**

41. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

42. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

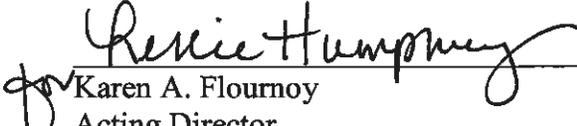
Effective Date

43. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 22<sup>nd</sup> day of August, 2011.

  
for Karen A. Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division

  
Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

William Sidney Smith  
Registered Agent  
Hayes Business Group, LLC  
604 Locust, Ste.1000  
Des Moines, Iowa 50309

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Steven Hayes  
Hayes Business Group, LLC  
d/b/a Allan Industrial Coatings  
22191 Highway 3  
Allison, Iowa 50602-0798

Dennis Ostwinkle, Supervisor  
IDNR Field Office #6  
1023 West Madison Street  
Washington, Iowa 52353-1623

Jeff Vansteenburgh, Supervisor  
IDNR Field Office #2  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401

**AUG 22 2011**

\_\_\_\_\_  
Date

  
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