



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-W-NP

JUL - 1 2009

CERTIFIED MAIL 7003-2260-0001-7778-1832
RETURN RECEIPT REQUESTED

Greg Trainor
Utilities, Streets and Facilities Director
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Re: Order for Compliance under section
309(a) of the Clean Water Act

Dear Mr. Trainor:

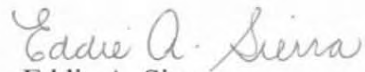
Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance (Order) issued to the City of Grand Junction (City) for alleged violations of the City's Publicly Owned Treatment Works (POTW) Pretreatment Program. The Order specifies the nature of the violations under the Clean Water Act (Act), as amended, 33 U.S.C. § 1251, et seq. The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary in order for the City to achieve compliance with the Act. Furthermore, the Order requires the City to notify EPA in writing within ten (10) days whether it intends to comply with the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued there under. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal action in U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited herein. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the City's compliance with the CWA, the most knowledgeable people on my staff regarding these matters for legal and technical issues, respectively, are Linda Kato, Enforcement Attorney, at (303) 312-6852, and Aaron Urdiales, NPDES Enforcement Unit, at (303) 312-6844.

Sincerely,



Eddie A. Sierra

Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Administrative Order for Compliance

cc: Janet Kieler, CDPHE
Dan Tonello, City of Grand Junction
Al Garcia, EPA Region 8

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

ADMINISTRATIVE ORDER FOR COMPLIANCE

2009 JUN 30 AM 10:22

<p>IN THE MATTER OF:</p> <p>The City of Grand Junction Grand Junction, Colorado NPDES Permit No. CO-0040053</p> <p>Respondent</p>	<p>Findings of Violations & Order for Compliance under sections 308 and 309 of the Clean Water Act.</p> <p>Docket No. CWA-08-2009-0019</p>
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STATUTORY AUTHORITY

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (the Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, *inter alia*, sections 307 or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires the Administrator to establish pretreatment standards regulating the introduction of pollutants into Publicly-Owned Treatment Works (POTWs), and section 402, 33 U.S.C. § 1342(b), authorizes the Administrator to ensure compliance with permits issued pursuant to the National Pollutant Discharge Elimination System (NPDES). This Order is also issued pursuant to section 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator to require reports necessary to determine compliance with any pretreatment standard or standard of performance established under sections 307 and 402 of the Act. These authorities have been delegated to the undersigned official.

FINDINGS OF FACT

The Grand Junction POTW

1. The City of Grand Junction (Respondent) is a municipality as defined under section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. A municipality is a “person” within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. Respondent owns and operates a wastewater treatment facility located at 2145 River Road, Grand Junction, CO. This facility is a Publicly-Owned Treatment Works (POTW) as that term is defined under 40 C.F.R. § 403.3 and will be referenced in this Order as the “POTW.”
4. The POTW discharges treated wastewater into the Colorado River and has a design capacity of 12.5 million gallons per day (MGD) for hydraulic flow (30-day average) and 26480 lbs. BOD₅ per day for organic loading (30-day average).
5. Respondent was issued a permit pursuant to the National Pollutant Discharge Elimination System (NPDES) program, Permit Number CO-0040053 (the NPDES Permit), by the State of Colorado. The NPDES permit, which became effective November 1, 2006, expired on February 28, 2009, and was administratively extended, authorizes Respondent to discharge from the POTW into the Colorado River in accordance with section 402 of the Act, 33 U.S.C. § 1342.
6. The Colorado River is an interstate water and “water of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, a “navigable water” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

7. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
8. Pursuant to 40 C.F.R. § 403.8(a), “any POTW with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program.”
9. The State of Colorado is a “NPDES State,” because EPA has approved the State of Colorado’s NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b).
10. The State of Colorado has not received EPA approval of its pretreatment program; therefore, at all times relevant to this Order, EPA has been and continues to be the “Approval Authority” within the meaning of 40 C.F.R. § 403.3(c).
11. EPA approved Respondent’s Pretreatment Program on October 11, 1984, at which time Respondent became the “Control Authority” as defined under 40 C.F.R. § 403.3(f).
12. Pursuant to 40 C.F.R. § 403.12, as the Control Authority, Respondent is responsible for ensuring that Industrial Users (defined in 40 C.F.R. § 403.3(j)) that discharge to the POTW comply with all Pretreatment Standards (defined in 40 C.F.R. § 403.3(l)).
13. Pursuant to 40 C.F.R. § 403.8(f)(1)(iii), as the Control Authority, Respondent is responsible for controlling through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements.
14. Pursuant to 40 C.F.R. § 403.8(f)(2), Respondent is required to identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program, and

follow procedures to ensure compliance with the Pretreatment Standards by each Industrial User, including identifying the character and volume of pollutants contributed to the POTW by Industrial Users and notifying the Industrial Users of applicable Pretreatment Standards.

15. Pursuant to 40 C.F.R. § 403.8(f)(6), Respondent is required to prepare and maintain a list of its Industrial Users who are subject to Categorical Pretreatment Standards. The list shall identify the criteria in 40 C.F.R. § 403.3(v)(1) applicable to each Industrial User. The initial list shall be submitted to the Approval Authority and modifications to this list must be submitted to the Approval Authority pursuant to 40 C.F.R. § 403.12(i)(1).
16. Pursuant to Part I, section 7.a.i of the NPDES permit, Respondent is required to update industrial user information at a minimum of once per year or at that frequency necessary to ensure that all Industrial Users are properly permitted and/or controlled.
17. Pursuant to 40 C.F.R. § 403.8(f)(2)(v) and Part I, section 7.a.ii of the NPDES Permit, Respondent is required to sample and inspect each Significant Industrial User (SIU), as defined at 40 C.F.R. § 403.3(v), at least once per calendar year.
18. Pursuant to Part I, section 7.a.vi of the NPDES Permit, Respondent is required to control the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of SIUs, this control shall be achieved through permit, order, or similar means.

Alpine Powder Coating Company

19. Alpine Powder Coating Company (Alpine Powder) is located at 2295 Logos Court in Grand Junction and is within Respondent's service area.

20. Alpine Powder performs phosphate coating and is categorized as a Metal Finisher under 40 C.F.R. Part 433.
21. Alpine Powder has been discharging process wastewater to the POTW since at least April 8, 1998.
22. Alpine Powder is an “Industrial User” within the meaning of 40 C.F.R. § 403.3(j). It is subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. Part 433 Metal Finishing and hence a “Categorical Industrial User” (CIU) and a SIU as defined at 40 C.F.R. § 403.3(v).
23. Respondent’s staff visited the Alpine Powder facility on or about April 8, 1998, and noted that the “process that generates wastewater” was “wash soap.” According to the facility diagram, Respondent also observed that the drain leading to the POTW was located near the wash rack. Respondent did not place Alpine Powder under a control mechanism after the site visit.
24. On or about November 24, 2003, Respondent contacted Alpine Powder via telephone. Respondent’s notes from the phone call state that Gary Plsek of Alpine Powder told the Respondent that they do not discharge to the sewer. Respondent also noted the need to issue a Zero Discharge permit.
25. Respondent noted that as of November 30, 2005, the Alpine Powder file was “still open” and that Respondent still had not issued a zero discharge permit to Alpine Powder.

The EPA Pretreatment Compliance Inspection and Audit

26. On June 27, 2006, EPA conducted a pretreatment compliance inspection of the Respondent’s facility. The corresponding August 6, 2006 inspection report to

Respondent reiterated the approved program's requirement that "inspections [of SIUs] will be performed yearly" under Part E of the report.

27. On March 24, 2008, EPA received Respondent's Annual Report on POTW Implementation for the reporting period January 1, 2007 to December 31, 2007. In the report, Respondent stated that there were no non-permitted zero-discharging CIUs, and that there were no SIUs that had not been inspected or sampled during the reporting year.
28. On July 16 through 18, 2008, EPA conducted a Pretreatment Audit of Respondent's POTW, including randomly-selected inspections of Industrial Users.
29. On July 17, 2008, EPA conducted an inspection at the Alpine Powder facility, and discovered that Alpine Powder was discharging wastewater subject to the Categorical Pretreatment Standards under the Metal Finishing Regulations, 40 C.F.R. Part 433, through the drain near its wash basin, which leads to the POTW. EPA verbally informed Respondent at the close of its inspection that corrective action needed to be taken to rectify the Alpine Powder violation.
30. On September 22, 2008, EPA sent a Pretreatment Audit report to Respondent that required Respondent to "immediately control Alpine Powder Coatings, a metal finisher that has been operating in the service area without a Pretreatment control mechanism for a significant number of years."
31. On October 22, 2008, Respondent sent a response to the EPA Audit Report that on August 8, 2008, a zero discharge permit was issued to Alpine Powder Coating. The response also stated that "the floor drain in the shop was removed and replaced with a sump and pump that discharges collected process wastewater to an evaporation pond."

FINDINGS OF VIOLATION

Count I

(Failure to Identify All Significant Industrial Users)

32. Respondent's failure to properly identify Alpine Powder as a Significant Industrial User subject to the Categorical Pretreatment Standards constitutes a violation of 40 C.F.R. § 403.8(f)(2).

Count II

(Failure to Control Discharges from All Significant Industrial Users)

33. Respondent's failure to properly control discharges of pollutants from Alpine Powder to the POTW constitutes a violation of 40 C.F.R. §§ 403.12, 403.8(f)(1)(iii) and Part I, section 7.a.vi of the NPDES Permit.

Count III

(Failure to Annually Sample and Inspect All Significant Industrial Users)

34. Respondent's failure to annually sample and inspect Alpine Powder constitutes a violation of 40 C.F.R. § 403.8(f)(2)(v) and Part I, section 7.a.ii of the NPDES Permit.

Count IV

(Failure to Maintain and Update a List of All Significant Industrial Users)

35. Respondent's failure to update its list of Industrial Users subject to Categorical Pretreatment Standards to include Alpine Powder constitutes a violation of 40 C.F.R. § 403.8(f)(6) and Part I, section 7.a.i. of the NPDES Permit.

ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

36. Upon receipt of this Order, Respondent shall immediately comply with all requirements of its Pretreatment program.
37. Upon receipt of this Order, Respondent shall immediately initiate a characterization and categorization review process for each of its Industrial Users to ensure that all point sources in the service area have been identified and appropriately characterized.
38. Within ten (10) days of the receipt of this Order, Respondent shall give written notice to EPA of its intent to comply with the requirements of this Order.
39. Upon receipt of this Order, Respondent shall ensure that all Significant Industrial Users identified during the review process identified in paragraph 37, including those facilities that are subject to EPA categorical requirements, are placed under an appropriate control mechanism within (30) days after the date that the facility was identified as a SIU.
40. Within thirty (30) days after the end of the calendar year, Respondent shall submit to EPA a copy of its updated Industrial User Inventory. Respondent should include with the Industrial User Inventory all pertinent information regarding the characterization/categorization of all Industrial Users identified within the inventory. This information shall include, but not limited to, the following information for each Industrial User:

- a. Name of Industrial User.
- b. Location of Industrial User.
- c. Type of business, including applicable SIC or NAICS code(s).
- d. Inspection dates for the past 5 years including the associated inspection reports.
- e. Sampling dates and the associated results for the past 5 years, if applicable.
- f. The character and volume (flow rates) of pollutants contributed by the Industrial User to the POTW.
- g. Proof of notice to the Industrial Users of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act.
- h. Characterization/categorization determination of each IU and whether the Industrial User is significant, non-significant, require best management practices (BMPs) and/or subject to Categorical Pretreatment Standards.
- i. If Respondent has determined that an Industrial User is subject to Categorical Pretreatment Standards and is a Non-Significant Categorical Industrial User rather than a SIU, provide documentation of this determination including specific information on how the Industrial User meets the requirements outlined in 40 C.F.R. § 403.3(v)(2).
- j. If any Industrial User has been identified as a SIU through the evaluation in Paragraph 37, provide the date that the Industrial User was placed under an appropriate control mechanism.

This reporting requirement shall continue annually until EPA provides written notice that it may cease.

41. All notices and reports required by the Order to be given to EPA shall be sent to:

Aaron Urdiales
U.S. EPA Region 8
1595 Wynkoop Street, Suite 500
Denver, CO 80202
urdiales.aaron@epa.gov
Fax: 303-312-7202
Phone: 303-312-6844

42. All reports and information required by this Order shall include the following certification statement, to be signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official:

I hereby 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 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 or imprisonment for knowing violations.

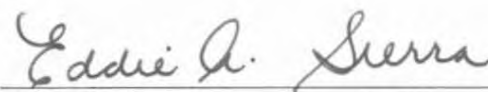
43. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
44. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's NPDES Permit which remains in full force and effect.

45. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Act. Be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act, while section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.
46. Nothing in this Order shall be construed to preclude the institution of further action under section 309 of the Act, 33 U.S.C. § 1319, for those violations cited herein or to relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.

Date: 6/30/09



Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice