

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: ) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE  
)  
The Arnold Engineering Co., )  
Ogallala Electronics Division, )  
Ogallala, Nebraska ) EPA Docket No. CWA-7-99-0009  
Respondent )  
)  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )  
\_\_\_\_\_ )

**I. PRELIMINARY STATEMENT**

1. The following Findings of Violation and Order for Compliance are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator to the Regional Administrator, EPA Region VII and re-delegated to the Director of the Water, Wetlands, and Pesticides Division, EPA Region VII.
2. The Nebraska Department of Environmental Quality (NDEQ) is the agency within the State of Nebraska authorized to administer the federal NPDES and Pretreatment Programs pursuant to Section 402 of the CWA, and its implementing regulations, and Memorandum(s) of Understanding between EPA and NDEQ, dated September 7, 1984. As such, NDEQ is the Approval Authority for the Pretreatment Program in Nebraska. The EPA maintains concurrent enforcement authority with authorized state NPDES and Pretreatment programs for violations of NPDES permits and/or violations of the Pretreatment program requirements.
3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 307 of the CWA, 33 U.S.C. § 1317. Section 307 of the CWA authorizes establishment of the toxic and pretreatment effluent standards, including promulgation of regulations at 40 C.F.R. Part 403, General Pretreatment Regulations, and 40 C.F.R. Parts 405 through 471, Categorical Pretreatment Standards.

4. For purposes of administering the Pretreatment Program in Nebraska, the NDEQ is the "Control Authority" as defined by 40 C.F.R. Part 403.12(a). The City of Ogallala, Nebraska, has not been required to develop a local Pretreatment Program under 40 C.F.R. Part 403.8.

## II. FINDINGS OF VIOLATION

5. The Arnold Engineering Co., Respondent, is an Illinois corporation, registered and licensed to do business in the state of Nebraska. Respondent's registered agent for service in Nebraska is C T Corporation System, Suite 1500, 206 South 13<sup>th</sup> Street, Lincoln, Nebraska 68508.

6. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

7. Respondent owns and operates two manufacturing facilities identified as the Ogallala Electronics Division in Ogallala, Nebraska. Respondent's operations located at 601 W. First Street, Ogallala, Nebraska, include cadmium plating, chromate conversion coating, and anodizing, all of which are regulated by the Federal Point Source Category for Metal Finishing, 40 C.F.R. Part 433, effective August 29, 1983. Additionally, Respondent's operations located at 411 West 2<sup>nd</sup> Street, Ogallala, Nebraska, include copper etching, aluminum etching, silver soldering and coil testing, all of which are also regulated by the above cited Metal Finishing regulations. (Hereafter the two Ogallala operations are collectively referred to as Respondent's "Manufacturing Facilities").

8. The City of Ogallala, Nebraska (hereafter "City" or "City of Ogallala") owns and operates a publicly owned treatment works (POTW) which receives process wastewater discharged from both Respondent's Manufacturing Facilities. As such, the Ogallala Manufacturing Facilities are considered indirect discharges and therefore subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

9. The City of Ogallala's POTW is a "point source" that "discharges pollutants" into the South Platte River, which is a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

10. Respondent's Manufacturing Facilities are each a "point source" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and an "industrial user" as defined by Section 502(18) of the CWA, 33 U.S.C. § 1362(18), and 40 C.F.R. § 403.3(h).

11. On February 12, 1996, NDEQ issued Respondent a Nebraska Pretreatment Program (NPP) Authorization to Discharge, NPP number NE0114634, covering discharges from both Respondent's Manufacturing Facilities to the City's POTW into the South Platte River. The sampling location for discharges from operations at 601 W. First Street is designated by the NPP

Authorization as Outfall 001. The sampling location for discharges from operations at 411 West 2<sup>nd</sup> Street is designated by the NPP Authorization as Outfall 002.

12. Respondent's NPP Authorization expired on April 1, 1998, however, upon the timely filing of an application to continue the regulated discharge, the terms and conditions of the NPP Authorization remain in effect until reissued or terminated by NDEQ.

13. The U.S. EPA performed inspections of Respondent's Ogallala Manufacturing Facilities pursuant to the authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a), on June 2, 3 and 4, and December 9, 1998. Included in the inspections was a review of the Manufacturing Facilities' sampling locations and sampling practices.

#### COUNT I

14. The facts stated in Paragraphs 5 through 13 above are incorporated herein by reference.

15. Requirements of the General Pretreatment Regulations at 40 C.F.R. § 403.6(d) prohibit dilution of wastestreams regulated by federal Point Source Categories.

16. Respondent's NPP Authorization at Appendix A, Section C.1, specifically requires Respondent to take samples and measurements of the regulated wastestreams at monitoring points "before the effluent joins or is diluted by any other waste stream, body of water or substance." In addition, Respondent's NPP Authorization at Part I, Section B, requires that samples of effluent from Outfall 002 be taken "at a sample point prior to the introduction of sanitary, noncontact cooling water and other noncategorically defined dilution flow."

17. The EPA inspections described in Paragraph 13 above found numerous wastestreams present at both Outfall 001 and Outfall 002 that are not regulated by the Metal Finishing Point Source Category, and therefore constitute dilution flows, as follows:

- a. Outfall 001 contained, in addition to regulated wastestreams, noncontact cooling water discharges.
- b. Outfall 002 was found to be continuously flushed with potable water discharged from a garden hose. In addition, the facility was found to continue to discharge rinse water when no parts were being rinsed.

18. Respondent's dilution flows at Outfalls 001 and 002, as described in Paragraph 17 above, constitute violations of 40 C.F.R. § 403.6(d) and NPP Authorization No. NE0114634, and as such are violations of Sections 301 and 307 of the CWA, 33 U.S.C. § 1311 and 1317.

## COUNT II

19. The facts stated in Paragraphs 5 through 13 above are incorporated herein by reference.
20. The General Pretreatment Regulations at 40 C.F.R. § 403.12(g)(4) and Respondent's NPP Authorization to Discharge at Part I, Sections A and B, require that Respondent determine compliance with pH limitations using grab samples.
21. The EPA inspections described in Paragraph 13 above found that Respondent sampled pH using composite samples.
22. Respondent's failure to use grab samples to determine compliance with the pH limitations of its NPP Authorization, as described in Paragraph 20 above, constitutes a violation of 40 C.F.R. 403.12(g)(4) and NPP Authorization No. NE0114634, and as such is a violation of Sections 301 and 307 of the CWA, 33 U.S.C. § 1311 and 1317.

## COUNT III

23. The facts stated in Paragraphs 5 through 13 above are incorporated herein by reference.
24. The General Pretreatment Regulations at 40 C.F.R. Part 403.12(e) require that all wastestreams subject to Point Source Categories be sampled at least twice per year for the demonstration of compliance.
25. The EPA inspections described in Paragraph 13 above determined that the Manufacturing Facility at 411 West 2<sup>nd</sup> Street has two Categorical discharges that are not sampled to determine compliance. Specifically, the wastestreams from the silver solder operation and the coil testing operation are not sampled.
26. Respondent's failure to sample the silver solder and coil testing operation wastestreams, as described in Paragraph 25 above, constitute violations of 40 C.F.R. Part 403.12(e), and as such are violations of Sections 301 and 307 of the CWA, 33 U.S.C. § 1311 and 1317.

## III. ORDER FOR COMPLIANCE

Based on the 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 as follows:

### **Cessation of Dilution**

27. Respondent shall immediately upon receipt of this Order eliminate all sources of dilution flow into wastestreams at Respondent's Manufacturing Facilities, including but not limited to the potable water flow into the copper etching and aluminum etching wastestream at Outfall 002.

### **Sampling Requirements**

28. Respondent shall at all times after receipt of this Order sample only wastewaters regulated by the federal Point Source Category for Metal Finishing at Outfalls 001 and 002.

29. Wastewaters sampled for demonstrating compliance with discharge limits applying to Outfall 001 of Respondent's NPP permit shall be taken in the plating room prior to the point of exit from the building in which they originate.

30. All discharges from Respondent's cadmium plating operations, chromate conversion coating operations and/or anodizing operations shall be sampled each and every time of discharge using composite sampling techniques as defined by Respondent's NPP Authorization. Each and every such sample shall be analyzed for copper, chromium and cyanide. All other pollutants listed for Outfall 001 in Respondent's NPP Authorization shall be analyzed in the first month of sampling after receipt of this Order, and thereafter at the frequency required by NPP Authorization No. NE0114634, but no less frequently than once every six months.

31. All discharges from Respondent's copper etching operations shall be sampled each and every time of discharge using composite sampling techniques as defined by Respondent's NPP Authorization. Each and every such sample shall be analyzed for copper. All other pollutants listed for Outfall 002 in Respondent's NPP Authorization shall be analyzed in the first month of sampling after receipt of this Order, and thereafter at the frequency required by NPP Authorization No. NE0114634, but no less frequently than once every six months.

32. The silver solder and coil testing wastestreams shall be sampled and analyzed for all pollutants listed for Outfall 002 in Respondent's NPP Authorization in the first month of sampling after receipt of this Order, and thereafter at a frequency of no less than once every six months. Alternatively, Respondent can elect to plumb these wastestreams to existing Outfall 002 and sample them together with the copper and aluminum etching wastestreams. If Respondent elects to perform the latter, then a detailed written description of Respondent's plan to accomplish the necessary plumbing modifications shall be included in the first Monthly Monitoring Report to EPA specified in Paragraph 38 below.

33. Respondent shall conduct the monitoring described in Paragraphs 30 through 32 above until notified in writing by EPA that such monitoring is no longer required.

34. Respondent shall handle and preserve all collected samples and laboratory analyses of samples required by this Order in accordance with the requirements of 40 C.F.R. Part 136.

35. Respondent shall ensure that all samples and measurements taken pursuant to this Order shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring locations specified in this Order and, unless otherwise specified by EPA, before the discharged effluent joins or is diluted by any other waste stream, body of water or substance. All equipment used for sampling and analysis must be routinely calibrated, inspected and maintained to ensure its accuracy.

36. The monitoring locations shall not be changed without prior written approval from EPA. Further, in the event that EPA determines that the measurement and/or analytical devices and/or methods used by Respondent are inaccurate or unreliable, EPA may direct Respondent to employ specific measurement devices or methods capable of providing representative sampling and results.

#### **Reporting Requirements**

37. For each day's sampling or measurements at each sampling location, Respondent shall complete a **Daily Monitoring Report** that contains the following information for all measurements, sampling and/or analyses taken during that day:

- a. The date, exact location, time and methods of sampling or measurements, and sample preservation techniques or procedures;
- b. Who performed the sampling or measurements;
- c. The date(s) analyses of samples were performed;
- d. Who performed the analyses;
- e. The analytical techniques or methods used to analyze samples; and
- f. The results of such analyses.

38. Beginning on the tenth calendar day of the first full calendar month following the effective date of this Order, and on or before the tenth calendar day of each subsequent month, Respondent shall submit to EPA a **Monthly Monitoring Report** for the prior calendar month. (For example, if this Order is received by Respondent during the month of April, the first

Monitoring Report shall be due on May 10<sup>th</sup> and contain all information for the month of April.) Each monthly Monitoring Report shall contain the following information:

- a. A summary of the results of all samples and monitoring taken by Respondent during the prior calendar month (reporting period) that describes all instances where the sample results demonstrate exceedances of the effluent limits set forth in NPP Authorization No. NE0114634; and
- b. Copies of all Daily Monitoring Reports, as described in Paragraph 37 above, for the prior calendar month.

39. Respondent shall notify EPA in writing at least ninety (90) days prior to any facility expansion, production increase, or process modifications which may result in new or increased discharges or changes in the nature of the discharge from Respondent's Manufacturing Facilities.

40. Respondent shall notify EPA in writing at least ten (10) days prior to implementing any planned operational changes at its Manufacturing Facilities which may result in exceedances of the effluent limits set forth in NPP Authorization No. NE0114634.

#### **Submissions**

41. All submissions made by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification that is signed by a responsible corporate officer or plant manager:

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.

42. All reports and documents required to be submitted to EPA by this Order shall be delivered to:

Mr. Paul Marshall  
Pretreatment Coordinator  
NPDES and Facilities Management Branch, WWPD  
U.S. Environmental Protection Agency-Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

43. A copy of all reports and documents required under this Order shall be delivered to:

Mr. Rudy Fiedler  
Unit Supervisor, Permits and Compliance Section  
Nebraska Department of Environmental Quality  
P.O. Box 98922, State House Station  
Lincoln, Nebraska 68509-8922

#### **Effect of this Order for Compliance**

44. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.

45. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

46. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address additional noncompliance with the CWA, including but not limited to additional non-compliance with the requirements of Sections 301 and 307 of the CWA. In the event of any such subsequent amendment to this Order, all requirements of this Order not effected by the amendment shall remain in effect as specified by this Order.

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

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

#### **Severability**

48. 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 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**

49. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.



U. GALE HUTTON

Director

Water, Wetlands, and Pesticides Division

U.S. Environmental Protection Agency - Region VII

3-30-99

DATE



Patricia Gillispie Miller

Senior Assistant Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency - Region VII

3/29/99

DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered the original foregoing Findings of Violation and Order for Compliance to the Regional Hearing Clerk, U.S. Environmental Protection Agency - Region VII, 726 Minnesota, Kansas City, Kansas 66101, and delivered by certified mail, return receipt requested, copies of such document to:

C T Corporation System  
Suite 1500, 206 South 13<sup>th</sup> Street  
Lincoln, Nebraska 68508

Manager  
Ogallala Electronics Division  
The Arnold Engineering Company  
601 W. First Street  
Ogallala, Nebraska 69153

Patrick W. Rice  
Assistant Director  
Nebraska Department of Environmental Quality  
P.O. Box 98922, State House Station  
Lincoln, Nebraska 68509-8922

March 30, 1999  
Date

Janice Miller