

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

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IN THE MATTER OF: )  
 )  
Parker-Hannifin Corporation )  
d/b/a Jefferson Products Company )  
711 Industrial Avenue )  
Washington, Missouri 63090 )  
Respondent. )  
 )  
Proceeding under Section 309(g)(2)(B) )  
of the Clean Water Act, as amended, )  
33 U.S.C. § 1319(g)(2)(B) )  
\_\_\_\_\_ )

CONSENT AGREEMENT  
AND FINAL ORDER

Docket No. CWA-07-2006-0220

**CONSENT AGREEMENT/FINAL ORDER**

The United States Environmental Protection Agency, Region VII ("EPA") and Parker-Hannifin Corporation (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 64 Fed. Reg. 40181, 40183 (July 23, 1999), codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). This administrative action is being conducted pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules, 40 C.F.R. Part 22. This Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement/Final Order.

The Complainant is the Director of the Water, Wetlands and Pesticides Division, who has been duly delegated the authority to bring this action. The authority to execute this Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation No. 2-52-A. The Regional Administrator has delegated this authority to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII, by EPA Delegation No. R7-2-052-A.

Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes an administrative civil penalty of not more than \$10,000 per day for violations of certain provisions of the CWA, including Section 307, 33 U.S.C. § 1317. This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that

penalties of up to \$11,000 per day during which the violation continues, not to exceed \$127,500, are now authorized for violations that occur between January 30, 1997 and March 15, 2004, and penalties of up to \$11,000 per day for each day during which the violation continues, not to exceed \$137,500, may be assessed for violations of the CWA occurring after March 15, 2004. Based upon the facts alleged in this Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 309(g)(3) of the CWA, 42 U.S.C. § 1319(g)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1311(g)(2)(B), for the alleged violations of the CWA contained in this Consent Agreement/Final Order.

### **Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2).
2. This Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated the Section 307 of the CWA, 33 U.S.C. § 1317.
3. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), provides that if EPA determines that any person has violated certain requirements of the CWA, including Section 307, EPA may, after consultation with the State in which the violation occurs, assess a civil penalty for such violation. The State of Missouri has been notified of this action in accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).
4. EPA retains authority pursuant Sections 309(g)(6) and 402(i) of the CWA, 33 U.S.C. §§ 1319(g)(6) and 1342(i), to enforce the requirements of the CWA.
5. In assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the provisions of Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), require that EPA must consider various factors, including the nature, extent, and gravity of the violation, the degree of culpability, economic benefit, or savings resulting from the violation, and such other factors as justice may require.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 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, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 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").

7. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(a), EPA promulgated regulations at 40 C.F.R. Part 403 establishing the General Pretreatment Regulations and at 40 C.F.R. Parts 405 through 471 establishing the Point Source Categorical Standards. These regulations and standards are designed to regulate the introduction into POTWs of pollutants which are determined not to be amenable to treatment by such treatment works or which could interfere with the operation of such treatment works.

8. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. MDNR is also the state agency with the authority to administer the Pretreatment Program in Missouri pursuant to Section 402 of the CWA, implementing regulations, and a Memorandum of Understanding dated June 3, 1981. As such, MDNR is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

9. The City of Washington, Missouri (hereafter "City") developed a POTW Pretreatment program, pursuant to 40 C.F.R. § 403.8. The MDNR approved the City's POTW Pretreatment program on or about July 16, 1984.

### **Factual Background**

10. The City owns and operates a POTW in Franklin County, Missouri.

11. The City's POTW is a "point source" that "discharges pollutants" to the Missouri River, which is considered "navigable waters of the United States," respectively as defined within Section 502 of the CWA, 33 U.S.C. § 1362.

12. On or about July 28, 2000, NPDES Permit No. MO-0025810 (hereafter, "NPDES permit"), was issued to the City by the MDNR pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The NPDES permit contains limitations for discharges of effluent from the POTW to waters of the United States. Also contained in the Permit is the requirement under Section C. Special Conditions, Paragraph 10, for the City to "implement and enforce its approved pretreatment program in accordance with the requirements of 40 CFR Part 403."

13. The City is required by 40 CFR § 403.8(f)(1)(iii) to:

*... [c]ontrol through permit, order of similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements, In the case of Industrial Users identified as significant under 40 CFR 403.3(t), this control shall be achieved through permits or individual control mechanisms issued to each such user.*

14. The term Significant Industrial User is defined at 40 CFR § 403.3(t) to include, in pertinent part, "all industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subpart N."

15. Respondent is an Ohio corporation, registered and licensed to do business in the State of Missouri. Respondent's registered agent for service in Missouri is The Corporation Company, 120 South Central Avenue, Clayton, Missouri 63105.

16. Respondent owns and operates a manufacturing facility located at 711 Industrial Avenue, Washington, Missouri ("Facility"), at which Respondent performs copper and nickel electroplating in the process of manufacturing components for refrigeration and air conditioning equipment.

17. The Facility was previously owned and operated by Jefferson Products Company, which merged with, and operated under the name of, Sporlan Valve Company in approximately October 2004. Respondent Parker-Hannifin Corporation acquired Sporlan Valve Company in approximately October 2004. The facility has retained the name "Jefferson Products Company" on the building.

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

19. Respondent discharges wastewater from its manufacturing facility into the City's POTW, and is therefore an "Industrial User" as defined at 40 C.F.R. § 403.3(t).

20. Electroplating is a regulated process under the federal Categorical Standards as defined by the General Pretreatment Regulations at 40 C.F.R. § 403.6.

21. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403 and the Metal Finishing Point Source Category Pretreatment Standards at 40 C.F.R. Part 433. Therefore, Respondent is a Significant Industrial User as defined by 40 CFR § 403.3(t).

22. The City, pursuant to requirements of 40 CFR § 403.8(f)(1)(iii), issued to Respondent a Pretreatment discharge permit (hereafter "Pretreatment permit") on or around January 31, 1997, with an expiration date of December 31, 2000. The Pretreatment permit was administratively extended by letter on or around May 29, 2003.

23. Part 1, Subsection A. authorizes Respondent to discharge process wastewater to the City of Washington sewer system from Outfall 001.

24. Part 1, Subsection B. of Respondent's Pretreatment permit prescribes daily maximum and monthly average effluent limitations for Respondent's discharge from Outfall 001 for certain pollutants, including, but not limited to, copper, nickel, zinc, cyanide, and pH.

25. Part 2, Subsection A. of Respondent's Pretreatment permit establishes monitoring requirements for Respondent's discharge from Outfall 001. The monitoring requirements include sampling at least every 6 months of pollutant parameters limited by Part 1, Subsection B of the Pretreatment permit and continuous monitoring of flow from Outfall 001.

26. Part 5, Section 4., Additional Reporting Requirements, Subsection F. of Respondent's Pretreatment permit establishes reporting requirements for Operating Upsets. This section, in pertinent part, states:

*Any permittee that experiences an upset in operations that places the permittee in a temporary state of noncompliance with the provisions of either this permit...shall inform the City of Washington within 24 hours of becoming aware of the upset...*

*A written follow-up report of the upset shall be filed by the permittee with the City of Washington within five days. The report shall specify:*

- 1. Description of the upset, the cause(s) thereof and the upset's impact on the permittee's compliance status;*
- 2. Duration of noncompliance, including exact dates and times of noncompliance, and if not corrected, the anticipated time the noncompliance is expected to continue; and*
- 3. All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset.*

*The report must also demonstrate that the treatment facility was being operated in a prudent and workmanlike manner.*

27. On or around February 2, 2005, EPA sent an information request to Respondent under Section 308 of the CWA, 33 U.S.C. § 1318(a), seeking information regarding Pretreatment practices and documents for Respondent's wastewater treatment system, including, among other things, discharge monitoring reports, wastewater treatment system operator logs, and supporting information, and all notices to the City regarding instances of noncompliance or upset conditions.

28. In March 2005, Respondent submitted two letters to EPA in response to the Information Request. Included within Respondent's response were Respondent's discharge monitoring reports to the City and operator logs for Respondent's wastewater treatment system.

#### **Findings of Violation**

29. The facts stated above are incorporated herein by reference.

30. EPA reviewed operator logs submitted by Respondent to EPA in response to the Information Request and identified instances of treatment system upset on at least the following sixteen occasions from June 2001 through February 2003 (summarized in the Table below), which were also periods of discharge to the POTW:

Date	Comment from the Operator Logs
June 21, 2001	The filter press ran all night, pumping low pH wastewater into city system.
August 20, 2001	A degreaser was dumped causing copper to be retained in the treatment system.
September 24, 2001	Floc is in suspension. "Monster looks like shit." Metal bearing floc is discharged to city.
November 5, 2001	Degreaser drained into system, keeping floc in suspension. Floc discharged to city.

Date	Comment from the Operator Logs
November 6, 2001	Red floc in suspension, flowing over weirs and discharged to city.
November 15, 2001	Treatment system pumped down- untreated contents discharged to the city.
December 5, 2001	Multiple issues. "Monster looks like [ ]."
December 6, 2001	Discharging partially treated wastewater.
December 19, 2001	Filter press ran all night discharging low pH water to city.
December 20, 2001	Filter press ran all night. "this is 5 <sup>th</sup> time this year"
January 25, 2002	Floc is red, sludge boiling. Clarifier looks bad. System upset. Floc discharged to city.
January 28, 2002	System upset,-floc is red. "looks bad"
February 5, 2002	Sludge boiling through baffles, discharging to city.
November 22, 2002	System upset. "monster is all [ ] up"
January 29, 2003	Sludge is rising over baffles and discharging to the city.
February 5, 2003	System upset. Monster milky white, discharging floc to city.

31. Respondent's operator logs, as identified in Paragraph 30, above, indicate daily flow meter readings for the discharge of wastewater from Respondent's Outfall 001 to the City's sewer system.

32. Meter readings from Respondent's operator logs for December 6 and 20, 2001 and February 5, 2002, as identified in the Table in Paragraph 30 above, are inconclusive regarding discharges from Outfall 001 on those dates. Meter readings from Respondent's operator logs indicate discharge flows from Outfall 001 on the remaining dates identified in Table in Paragraph 30 above.

33. During periods of treatment system upset, such as identified in Paragraph 30 above, the wastewater discharged from Respondent's facility to the City's POTW was untreated or under-treated and, more likely than not, violated the effluent limitations in Respondent's Pretreatment permit for some or all of the pollutants copper, nickel, and pH.

34. Respondent provided EPA no correspondence with the City reporting notice of any noncompliance and/or upset conditions as described in the operator logs.

35. Respondent's discharge of wastewater to the City of Washington sewer system during periods of treatment system upset, and Respondent's failure to report instances of violations, including instances of upset, to the City as required by its Pretreatment permit are violations of the Pretreatment permit and Section 307 of the CWA, 33 U.S.C. § 1317.

36. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the facts stated above, it is proposed that a civil penalty be assessed against Respondent, the amount of which is set forth in Paragraph 37, below.

### **Proposed Administrative Penalty**

37. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondent for the CWA violations cited above, in the amount of \$35,000.

### **CONSENT AGREEMENT**

38. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

39. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

40. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

41. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

42. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

43. This Consent Agreement/Final Order resolves all civil administrative claims for penalties for CWA violations arising out of the matters set forth herein and/or the subject incidents. Complainant reserves the right to take any enforcement action with respect to any other violation of the CWA or any other applicable law, except for any other violation arising out of the matters addressed in this Consent Agreement/Final Order and/or the subject incidents.

44. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

45. Respondent agrees, in settlement of the claims alleged in this Consent Agreement/Final Order, to pay a civil penalty of \$35,000, as set forth in the Final Order, below.

46. This Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

47. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

### **FINAL ORDER**

Pursuant to the authority of Section 309(g) of the CWA, 22 U.S.C. § 1319(g), and according to the terms of this Consent Agreement/ Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty Five Thousand Dollars (\$35,000) within thirty (30) days following the effective date of this Consent Agreement/Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

US EPA, Region VII  
PO Box 371099M  
Pittsburgh, PA 15251.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Patricia Gillispie Miller  
Office of Regional Counsel  
U.S. EPA, Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

3. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

4. This Final Order portion of this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns.

5. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement/Final Order by initiating a judicial or administrative action under Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement/Final Order.

7. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

8. The provisions of this Consent Agreement/Final Order shall be deemed satisfied upon full payment of the mitigated penalty amount and notice to EPA that such payment has been made.

9. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

11/13/06

Date

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

  
Patricia Gillispie Miller  
Senior Assistant Regional Counsel



IT IS SO ORDERED. This Final Order shall become effective immediately.

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer

Date November 15, 2006

**CERTIFICATE OF SERVICE**

I certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Consent Agreement/Final Order to the agents for Parker-Hannifin Corporation, and the State of Missouri, as follows:

James M. Donchess  
Assistant General Counsel  
Parker-Hannifin Corporation  
6035 Parkland Blvd.  
Cleveland, Ohio 44124

Steven J. Poplawski  
Bryan Cave LLP  
One Metropolitan Square, Suite 3600  
St. Louis, Missouri 63102-2750

Kevin Mohammadi  
MDNR, Jefferson City Office

Mike Struckoff  
MDNR, St. Louis Regional Office

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Regional Hearing Clerk

IN THE MATTER OF Parker-Hannifin Corporation d/b/a Jefferson Products Company  
Respondent  
Docket No. CWA-07-2006-0220

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Patricia Gillispie Miller  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

James M. Donchess  
Assistant General Counsel  
Parker-Hannifin Corporation  
6035 Parkland Blvd.  
Cleveland, Ohio 44124

Christopher Rennick  
800 Louis Street  
Washington, Missouri 63090

Steven J. Poplawski  
Bryan Cave LLP  
One Metropolitan Square, Suite 3600  
St. Louis, Missouri 63102-2750

Kevin Mohammadi  
Chief Enforcement Section  
Bureau of Water  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

IN THE MATTER OF Parker-Hannifin Corporation d/b/a Jefferson Products Company  
Respondent  
Docket No. CWA-07-2006-0220

and

Mike Struckoff  
Missouri Department of Natural Resources  
St. Louis Regional Office  
7545 S. Lindbergh, Suite 210  
St. Louis, Missouri 63125

11/15/06  
Dated

  
Kathy Robinson  
Hearing Clerk, Region 7