

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2007-0023
Esselte Pendaflex Corporation)	
850 West Park)	
Union, Missouri 63084)	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 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). As an element of this ORDER, provision of information is required pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318. These authorities have been delegated by the Administrator to the Regional Administrator, EPA, Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region VII.
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*, Sections 307 and 402 of the Act, 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").
3. Pursuant to Section 307(b) of the Act, 33 U.S.C. § 1317(b), EPA promulgated regulations at 40 C.F.R. Part 403 establishing the General Pretreatment Regulations. These regulations are designed to control the introduction of pollutants into POTWs which may pass through or interfere with the treatment processes of such treatment works or which may contaminate sewage sludge.

4. The General Pretreatment Regulations at 40 C.F.R. § 403.3(i) and (n) set forth definitions for interference and pass through, respectively. Specifically:

- a. “Interference” is defined, in pertinent part, as a discharge of pollutants, which alone or in conjunction with other sources, inhibits or disrupts the treatment processes or operations of a POTW, and which therefore is a cause of a violation of any requirement of a POTW’s NPDES permit; and
- b. “Pass through” is defined, in pertinent part, as a discharge of pollutants which exits a POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with other sources, is a cause of a violation of any requirement of a POTW’s NPDES permit.

5. Pursuant to 40 C.F.R. § 403.5(a), users are prohibited from introducing pollutants into a POTW which result in the “pass through” of pollutants through the POTW, or “interference” with the operations of the POTW.

6. 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, and its implementing regulations. EPA retains concurrent enforcement authority with authorized state NPDES and Pretreatment programs under Sections 309 of the CWA, 33 U.S.C. § 1319.

II. General Factual Allegations

7. Esselte Pendaflex Corporation (“Respondent”), is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), incorporated in the state of California, and registered to do business in the state of Missouri.

8. At all times relevant, Respondent was, and still is, the owner and/or operator of a filing and office supply manufacturing facility located at 850 West Park, Union, Missouri 63084 (the “facility”).

9. The City of Union, Missouri (“City”) owns and operates a POTW in Franklin County, Missouri. The City’s POTW includes a wastewater treatment plant and sewage collection system, which receive wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent’s facility.

10. The City’s POTW is a “point source” that “discharges pollutants” into the Bourbeuse River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. §§ 1362(14) and (12).

11. The Bourbeuse River is considered “navigable waters” of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

12. On or about July 28, 2000, MDNR issued the City NPDES permit number MO-0025283 pursuant to Section 402 of the Act, 33 U.S.C. § 1342. NPDES permit number MO-0025283 was revised on August 10, 2001.
13. The City's NPDES Permit contains limitations for discharges of effluent from the City's POTW to the Bourbeuse River.
14. The City's NPDES Permit contains POTW discharge limits for, among other pollutants, any contaminant or substance in sufficient amount to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses.
15. Respondent discharges process wastewater from the Facility into the City's POTW, and therefore is an "industrial user," as defined by 40 C.F.R. § 403.3(h).
16. The Respondent's process wastewater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), including but not limited to ink and/or dye.
17. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.
18. On or about January 10, 2006, EPA performed an inspection of the City of Union's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

III. Findings of Violation

Count I - Interference and Pass Through Violations

19. The facts stated in Paragraphs 7 through 18, above, are hereby incorporated by reference.
20. Pursuant to 40 C.F.R. Part 403, Respondent shall not discharge pollutants which cause interference or pass through at the City's treatment facility.
21. During the EPA inspection in January 2006, EPA observed blue-green dye-stained berms in the treatment units at the POTW and pass through of blue-green dyed effluent to the Bourbeuse River.
22. Respondent, as a discharger to the POTW, alone or in conjunction with other industrial users, caused the City to violate the effluent limitation of NPDES permit number MO-0025283.
23. The discharges from Respondent, which alone or in conjunction with other industrial users, have caused the City to incur the violation stated above, and constitute pass through of pollutants and/or interference of the POTW's treatment processes and operations.

24. The occasions of pass through and/or interference by Respondent, as described above, are violations of the City of Union's 2000 NPDES permit and the General Pretreatment Regulations at 40 C.F.R. § 403.5(a)(1), and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

IV. Order for Compliance

25. Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

26. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide EPA with a written Compliance Plan, for EPA's review and approval, describing in detail how Respondent will no longer cause pass through and/or interference at the POTW as described in the violations noted herein and come into compliance with 40 C.F.R. Part 403. At a minimum, the proposal shall include:

- a. A description of any process changes Respondent proposes to undertake at the facility to reduce loadings in the wastewater discharged to the POTW;
- b. A description of wastewater treatment modifications Respondent proposes to undertake at the facility to reduce loadings in the wastewater discharged to the POTW;
- c. A schedule for implementation of the proposed action(s); and
- d. Submission of cost information relating to any proposed action.

27. Within thirty (30) days of receipt of this Order, Respondent shall provide EPA with responses to the following requests for information. Unless otherwise specified, all information is requested for the period from January 1, 2001 through the present.

- a. With regard to the *production process(es)* at the Esselte Pendaflex Corporation facility in Union, Missouri, provide the following information regarding the processes and production lines operated at the facility:
 - i. A detailed description of each production line and product.
 - ii. For each production line identified in question 27(a)(i), above, specify the type and color of dyes and/or inks, if any, used in the process. Identify the amount of each dye and/or ink used in each process, a description of the method of disposal for the spent dye and/or ink, the amount of dyes and/or inks disposed, and the frequency of the disposal.

- iii. For each production line identified in question 27(a)(i), above, specify the average and peak volumes of wastewater generated, if any, from such process.
 - iv. A record of all spills or dumps, whether accidental or deliberate, of dyes and/or ink to the City of Union's collection system.
- b. With regard to the *wastewater treatment process(es)* at the Esselte Pendaflex Corporation facility in Union, Missouri, provide:
- i. Information regarding all wastewater treatment agreements from local or state agencies regarding wastewater processes for Esselte Pendaflex Corporation including but not limited to:
 - I. treatment agreements, permits, orders, contracts or other documents regarding conditions, limitations, or other requirements on current or planned wastewater processes;
 - II. notices or other correspondence from local or state agencies regarding non-compliance with the terms of any wastewater agreement, permit, order or contract for the Esselte Pendaflex Corporation facilities; and
 - III. all records, memoranda or other documents discussing, describing or otherwise pertaining to any non-compliance by Esselte Pendaflex Corporation with the applicable permit, agreement, order, or other discharge condition or limitation.
 - ii. A detailed description of the treatment process for each wastewater stream prior to discharge, including specific information regarding the treatment process for color.
 - iii. Numeric information regarding average daily flow of wastewater from the Esselte Pendaflex facility to the City of Union's wastewater treatment works.
 - iv. All records, including but not limited to, memoranda, letters, meeting notes, notices of violation, or other documents pertaining to the effect any discharge from Esselte Pendaflex has had, or is having, on the City of Union's wastewater treatment plant, the city's ability to treat wastewater from Pendaflex, or the city's discharge following treatment.

- v. All records, including but not limited to memoranda, letters, meeting notes, engineering studies or reports that discuss, propose or evaluate, the disposal or treatment of any wastewater or wastestream generated by Pendaflex, including those wastewaters or wastestreams consisting of, or containing, dyes and/or inks.
- c. The following certification statement signed by an authorized representative of Respondent

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 managed 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 violations.

28. The information required herein must be submitted notwithstanding any claim you may have concerning confidentiality. If you wish to assert a claim of confidentiality concerning information submitted in response to this letter, you may do so pursuant to the provisions of 33 U.S.C. § 1318 and 18 U.S.C. § 1905. In accordance with 40 C.F.R. § 2.203, you may claim all or a portion of information as confidential. You should clearly mark the information you claim as confidential. EPA will consider and process such a request pursuant to said statutes and EPA regulations at 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality is made, EPA is not required to make the inquiry to you otherwise required by 40 C.F.R. § 2.204(c)(2) prior to disclosure.

29. All documents required for submittal to EPA shall be hand delivered or sent by certified mail, return receipt requested, to the following:

Mr. Paul Marshall, Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101.

V. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

30. Compliance with the terms of this Order for Compliance shall not relieve Respondent of liability for, or preclude 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.

31. 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.

32. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 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

33. Nothing in this Order shall limit 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

34. 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

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

Termination

36. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

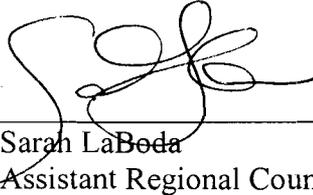
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



for

William A. Spratlin
Director

Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101



Sarah LaBoda

Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

IN THE MATTER OF Esselte Pendaflex Corporation, Respondent
Docket No. CWA-07-2007-0023

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation and Order for Compliance was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Chris Mowery
Plant Manager
Esselte Pendaflex Corporation
850 West Park Road
Union, Missouri 63084

CT Corporation System
Registered Agent for Esselte Pendaflex
314 North Broadway
St. Louis, Missouri 63102

Copy by First Class Mail to:

Mr. Kevin Mohammadi, Chief
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Dated: 2/23/07


Kathy Robinson
Hearing Clerk, Region 7