

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2019 SEP 17 AM 9:11

IN THE MATTER OF:)
)
Shiloh Sharps, Inc.,) Docket No. CWA-08-2019-0009
201 Centennial)
Big Timber, Montana 59011) ADMINISTRATIVE ORDER ON CONSENT
)
Respondent.)

FILED
EPA REGION VIII
BIRMINGHAM ALABAMA

INTRODUCTION

1. This Administrative Order on Consent (Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and Shiloh Sharps, Inc. (Respondent) to carry out the goals of the Clean Water Act, as amended, 33 U.S.C. § 1251 – 1387 (CWA), to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

STATUTORY AUTHORITY

2. This Order is issued pursuant to section 309(a) of the CWA, 33 U.S.C. § 1319(a).
3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits discharge of pollutants from a point source into navigable waters, except in compliance with, *inter alia*, sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342. Section 307 of the CWA, 33 U.S.C. § 1317, directed EPA to promulgate regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (POTW).
4. Pursuant to section 307(b) of the CWA, 33 U.S.C. § 1317(b), 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 are designed to regulate the introduction of pollutants into POTWs which are determined not to be susceptible to treatment by such treatment works or which could interfere with the operation of such treatment works.
5. To date, the State of Montana has not sought EPA approval of its authority to administer the pretreatment component of the National Pollution Discharge Elimination System (NPDES) program.
6. EPA has not required the City of Big Timber to develop an EPA-approved pretreatment program in accordance with 40 C.F.R. § 403.8(a).
7. Accordingly, EPA administers the pretreatment portion of the NPDES program in Montana and is the pretreatment “Control Authority,” as defined by 40 C.F.R. § 403.3(f), for industrial users that discharge to the Big Timber, Montana POTW.
8. EPA has established Categorical Standards for quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories pursuant to 40 C.F.R. § 403.6.

9. Metal finishing facilities that discharge wastewater to a POTW are subject to the categorical Metal Finishing Point Source Category Pretreatment Standards found at 40 C.F.R. part 433.
10. The applicability section of the Metal Finishing Point Source Category states at 40 C.F.R. § 433.10(a), “the provisions of this subpart apply to plants which perform any of the following six metal finishing operations on any basis material: ... Coating (chromating, phosphating, and coloring) ... If any of those six operations are present, then this part applies to discharges from those operations and also to discharges from any of the following 40 process operations: Cleaning, Machining, Grinding, Polishing, ... and Assembly.”
11. Coating is described in Table 3-1 on page 3-2 of EPA’s 1984 *Guidance Manual for Electroplating and Metal Finishing Pretreatment* Standards: “Coatings – Any operation that includes chromating, phosphating, metal coloring and passivating... Metal coloring involves the chemical method of converting the metal surface into an oxide or similar metallic compound to produce a decorative finish.”

FINDINGS OF FACT

12. The City of Big Timber, Montana owns and operates a POTW (Big Timber POTW) for the treatment of both domestic and industrial wastewater, which meets the definition of a POTW under 40 C.F.R. § 403.3(q). The Big Timber POTW is located at 1600 E. 3rd Avenue in Big Timber, Montana.
13. The Big Timber POTW discharges into the Boulder River, which is considered a “navigable water” of the United States, as defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7). Boulder River is a tributary of the Yellowstone River, which is a Traditional Navigable Waters (TNW) and Interstate Water.
14. The Big Timber POTW is a “point source” that “discharges pollutants,” as these terms are defined by section 502(14) and (12) of the CWA, respectively, 33 U.S.C. §§ 1362(14) and (12).
15. Shiloh Sharps, Inc., (Respondent) is a for-profit corporation incorporated under the laws of the State of Montana.
16. As a corporation, Respondent is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
17. Respondent owns and operates the factory shop (Facility) located at 201 Centennial Drive in Big Timber, Montana.
18. At all times relevant to this Order, Respondent owned and operated the Facility.
19. Respondent manufactures replica Sharps rifles through a combination of fabrication and assembly. Metal components of the rifles are colored through the application of a metal salt coating during the bluing process. This process includes cleaning, polishing, rinsing metal components, and immersing them in a solution of Du-Lite Steelkote®, a black oxide salt, to produce a decorative color finish.
20. EPA inspectors conducted an inspection of the Facility on July 18, 2018. Additionally, EPA and EPA contractor inspectors conducted an inspection on March 16, 2016.

21. Based on information gathered during the inspections and conversations with the Facility owner, EPA inspectors determined that Respondent generates process wastewater in the bluing process. This process includes machining, grinding, polishing, cleaning, immersion in the metal salt solution (black oxide salt), and rinsing of the black oxide salt. The process begins by cleaning the steel components that have been polished with acetone. Metal components are then put into a heated 70-gallon tank of water, and then placed in a 70-gallon Du-Lite soap solution bath. After the soap solution tank, the metal salt coating occurs in the 70-gallon bluing tanks and consists of immersing the metal components in a solution of Du-Lite Stealkote®, a black oxide salt, to provide a decorative color. After the bluing process is complete, the steel parts are rinsed in a 70-gallon cold-water rinse tank. Process wastewater from the initial 70-gallon warm water tank discharges through a pipe to the sewer system. Process wastewater from the 70-gallon cold water black oxide rinse tank is discharged through a pipe to the sewer system. The discharges to the sewer flow to Big Timber POTW. The metal salt solution within the bluing tanks are left filled for the next batch operation and are recharged as necessary. The metal salt solution is not discharged to the Big Timber POTW. According to the Facility owner, the soap solution tank is not discharged to the Big Timber POTW.
22. Because the process of applying a black metal salt on steel by immersion in a black metal salt solution is coating (coloring) and wastewater from this process is discharged to the Big Timber POTW, the Facility is subject to the Metal Finishing Point Source Category Pretreatment Standards at 40 C.F.R. part 433, subpart A.
23. Industrial users that discharge wastewater regulated by a categorical process, such as coating, are considered Significant Industrial Users, pursuant to 40 C.F.R. § 403.3(v). Therefore, Respondent is a Significant Industrial User (SIU).
24. The Facility was constructed in 1979 and Respondent first discharged process wastewater regulated by the Metal Finishing Point Source Category Pretreatment Standards in approximately 1979. Based on the EPA Memo titled *New Source Dates for Direct and Indirect Dischargers*, dated September 28, 2006, “*If the construction begins before the new source date, the source will generally be considered an existing source, not subject to new source standards, unless there was other construction after the new source date which constitutes a “total replacement” or is “substantially independent from the existing source” (see 40 CFR § 122.29(b)(ii) and (iii) and 40 CFR § 403.3(m)(1)(ii) and (iii)).*” The “new source date” for indirect dischargers subject to Metal Finishing Point Source Category Pretreatment Standards at 40 C.F.R. part 433, subpart A was August 31, 1982. Because the Facility began operations before August 31, 1982 and did not have construction after the new source date, it does not meet the definition of a “new source” as defined in 40 C.F.R. § 403.3(m)(1), thus it is an “existing source.”
25. The Facility discharges industrial process wastewater to the Big Timber POTW.
26. Respondent’s wastewater contains “pollutants,” as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
27. Respondent is a SIU that is subject to regulation under section 307(b) of the CWA, 33 U.S.C. § 1317(b), and at 40 C.F.R. parts 403 and 433.

FINDINGS OF VIOLATION

28. Pursuant to 40 C.F.R. § 403.12(b), industrial users that are an existing source subject to Categorical Standards and discharging to a POTW must submit a baseline report to the Control Authority within 180 days after the effective date of a categorical pretreatment standard (August 31, 1982), which includes, among other things, information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. Respondent failed to submit a baseline report to EPA required under 40 C.F.R. § 403.12(b).
29. Pursuant to 40 C.F.R. § 403.12(d), industrial users that are subject to Categorical Standards must submit to the Control Authority a report on compliance with categorical pretreatment standards within 90 days of commencing discharge. Respondent failed to submit a 90-day compliance report to EPA required under 40 C.F.R. § 403.12(d).
30. Pursuant to 40 C.F.R. § 403.12(e), industrial users that are subject to Categorical Standards must, in June and December of each year, submit a report (Periodic Compliance Report) to the Control Authority that indicates the nature and concentration of pollutants in the effluent which are limited by the Categorical Standard as well as measured or estimated average and maximum daily flows. The Control Authority may modify the months during which the above reports are to be submitted. Respondent has failed to submit the Periodic Compliance Reports semi-annually to EPA required under 40 C.F.R. § 403.12(e).

ORDER FOR COMPLIANCE

31. Based on the foregoing Findings of Violation, and pursuant to EPA's authority under section 309(a) of the CWA, 33 U.S.C. § 1319(a), EPA ORDERS, and Respondent, Shiloh Sharps, Inc., hereby agrees to take the following actions:
 - a. Immediately cease discharge of pollutants from the Facility and provide a report to the EPA explaining how the metal finishing wastewater is now being disposed. The report shall contain the date the discharge ceased and a photograph of the former discharge location showing no remaining discharge. If discharges do not cease immediately, the report shall specify the reason(s). The report shall include a signed certification as required by paragraph 33. Respondent shall include in the report how Respondent will prevent unpermitted discharges of wastewater, including potential spills and slug discharges into the floor drain, and provide treatment for any future discharge.
 - b. Comply with the CWA and the pretreatment regulations, including 40 CFR parts 403 and 433, for any future discharge(s) of wastewater.
32. All notices and reports to the EPA required by this Order shall be submitted to:

Jessica Duggan 8ENF-W-NW
NPDES and Wetlands Enforcement Section
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

33. All reports and information required by this Order shall include the following certification statement, signed and dated by a duly authorized representative of Respondent:

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.

34. No requirements associated with this Order shall be construed to release Respondent from having to comply with any limits or requirements established by the City of Big Timber or the State of Montana.

GENERAL PROVISIONS

35. The provisions of this Order are severable. If any provision of this Order is determined to be unenforceable, the remaining provisions shall remain in full force and effect.
36. The Order shall apply to and be binding upon Respondent, its agents, successors, and assigns, and upon all persons, contractors, and consultants acting under or on behalf of Respondent in matters related to compliance with this Order. No change in the ownership or operation of the Facility shall alter its responsibilities under this Order unless EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. A copy of this Order shall be provided to any successors prior to such transfer. Additionally, 30 calendar days prior to such transfer, Respondent shall send notification to the person and address identified in paragraph 32, above.
37. This Order does not constitute a permit authorizing any discharge of a pollutant.
38. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to perform or monitor any portion of the work called for by this Order, on or before the date of such retention, and shall condition all such contracts on compliance with the terms of this Order.
39. This Order does not constitute a waiver or a modification of any requirements of the CWA, or its implementing regulations, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under sections 309(b), (c), (d), or (g), of the CWA, 33 U.S.C. § 1319(b), (c), (d), or (g), for any violation cited in this Order or any other authority. 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 CWA for any violation whatsoever.
40. Failure to comply with the terms of this Order may result in Respondent's liability for civil penalties for each violation of up to \$54,833 per day under section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. part 19. Moreover, nothing in this Order shall be construed to relieve the Industrial User from civil and/or criminal penalties for noncompliance under 40 C.F.R. parts 403, 433, or State or Federal laws or regulations. Section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA.
41. In signing this Consent Order, Respondent neither admits nor denies the FINDINGS OF FACT or FINDINGS OF VIOLATION. As such, and without any admission of liability, Respondent consents to issuance of this Consent Order and agrees to abide by all the conditions herein. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial

or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT or FINDINDGS OF VIOLATION in any proceeding to enforce this Consent Order or in any action under this Consent Order.

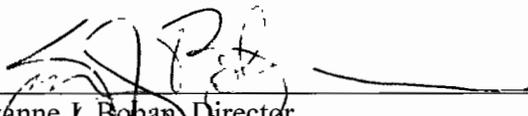
Effective Date

42. This Order shall be effective with respect to Respondent upon receipt of a fully executed copy hereof. All time periods herein shall be calculated from the date of Respondent's receipt of the Order.

Signatories

43. The undersigned representative of the Respondent has the legal authority to bind Respondent to the terms and conditions of this Order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8:

Date: 9-16-2019 By: 
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street 8-ENF
Denver, Colorado 80202-1129

SHILOH SHARPS, INC., Respondent:

Date: 9-11-2019 By: 
Kirk Bryan
Owner
Shiloh Sharps, Inc.
201 Centennial Drive
Big Timber, Montana 59011