

4. Pursuant to 40 C.F.R. § 123(1)(h), EPA is the authority to administer the federal NPDES program, including the Pretreatment program, in Indian Country, as defined in 18 U.S.C. § 1151, if a State or Tribal authority does not seek or have authority under the Act to regulate activities on Indian lands.

5. To date, neither the state of Nebraska nor the Omaha Tribe of Nebraska has sought authority to administer the NPDES program in the Omaha Tribal Reservation. Accordingly, the EPA administers the NPDES program and is the Pretreatment “Control Authority,” as defined by 40 C.F.R. § 403.3(f), within the Omaha Tribal Reservation.

6. 40 C.F.R. § 403.6 establishes 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.

7. Pursuant to 40 C.F.R. § 403.3(v), all industrial users subject to Categorical Standards are also “Significant Industrial Users.”

8. 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. Pursuant to 40 C.F.R. 403.6(b), new sources must comply with categorical pretreatment standards before discharging to a POTW.

9. Pursuant to 40 C.F.R. § 403.12(e), Industrial Users that are subject to Categorical Standards must, by at least each June and December of each year, submit a report to the Control Authority (EPA) that documents the nature and concentration of pollutants, average and maximum daily flows, and other information needed to ascertain compliance. The reporting requirements of this paragraph may be modified by the Control Authority.

FACTUAL BACKGROUND

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

11. Respondent’s facility, addressed at 608 Industrial Drive, Pender, Nebraska (“facility”) is located within the Omaha Tribal Reservation, which is Indian Country, as defined in 18 U.S.C. § 1151.

12. Respondent has at all relevant times been the “owner or operator” of the facility.

13. The Emerson facility contains two businesses, Emerson Manufacturing Corporation and DMD Manufacturing, which are owned and operated by Emerson Manufacturing Corporation. The businesses manufacture a variety of jacks for different applications, drum caddies, and truck ramps and stands. The manufacturing processes consist primarily of laser cutting, phosphate coating, metal fabrication and machining. Process wastewater is generated in the powder coating

bay. In addition, non-contact cooling water is produced in the metal fabrication process. Process wastewater produced during powder coating by batch process is discharged to the Village of Pender sanitary sewer connection located on the south side of the facility.

14. Respondent's facility is subject to the Metal Finishing Point Source Category Pretreatment Standards at 40 C.F.R. Part 433 and is, therefore, considered a "Categorical" Industrial User and a "Significant Industrial User."

15. The Village of Pender ("the Village"), Nebraska, is a "person" as defined by Section 502 of the Act, 33 U.S.C. § 1362(5). The Village owns and operates a Publicly Owned Treatment Works ("POTW") for the treatment of both domestic and industrial wastewater.

16. The Village's POTW discharges into Logan Creek Dredge, which is a tributary to the Platte and Missouri Rivers. The Logan Creek Dredge and the Platte and Missouri Rivers are considered "navigable waters" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. The Village's 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).

18. On April 4-5, 2011, EPA conducted an inspection of Respondent's facility in order to determine the City's compliance with the requirements of the CWA, 33 U.S.C. § 1311, *et seq.* During the inspection, EPA discovered that the Emerson Manufacturing facility was discharging industrial process wastewater to the Village of Pender POTW.

19. Respondent's wastewater is a "pollutant," and contains "pollutants," as defined by Section 502(6) of the CWA.

FINDINGS OF VIOLATION

20. The facts stated in Paragraphs 10 through 19, above, are hereby incorporated by reference.

21. 40 C.F.R. § 403.12(e) and 40 C.F.R. § 433 requires Industrial Users subject to Categorical Pretreatment Standards, such as Respondent, to monitor process wastewater discharges for metal and cyanide and submit semi-annual monitoring reports to the Control Authority. According to a review of Respondent's records obtained during EPA's inspection, Respondent conducts semi-annual sampling for metals and cyanide; however, Respondent failed to submit semi-annual reports to the Control Authority.

22. Respondent's failure to submit required semi-annual monitoring reports to EPA as the Control Authority are violations of 40 C.F.R. § 403.12(e), 40 C.F.R. § 433, and Section 307 of the CWA, 33 U.S.C. § 1317.

ORDER FOR COMPLIANCE

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(a)(3) of the Act, 1319(a)(3), the EPA ORDERS, and Respondent Emerson Manufacturing Corporation hereby agrees to take, the following actions:

23. By signature of duly authorized representatives for Respondent, Respondent agrees to comply with the terms of Attachment 1, "Attachment to Administrative Order on Consent for Compliance, United States Environmental Protection Agency, Region 7, Docket Number CWA-07-2013-0016."

GENERAL PROVISIONS

24. 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.

25. This 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.

26. Respondents may 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.

27. 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 Sections 309(b), (c), (d), or (g) of the Act, 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 Act for any violation whatsoever.

28. Respondent admits the jurisdictional allegations of this Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Order. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Order, except as such violations have been resolved by the Consent Agreement and Final Order entered between the parties (Docket No. CWA-07-2013-0016).

29. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consent to be bound by the requirements set forth herein. Respondent also 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, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

30. Subject to the limitations of Paragraph 29, above, Respondent reserves the right to contest liability in any subsequent action filed by EPA to seek penalties for violation of this Order on Consent, and reserves the right to contest liability in any subsequent action filed by EPA for any violations alleged in the Findings, above.

Effective Date

31. 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 receipt of the Order.

Signatories

32. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this Order. Specifically, the undersigned representative of Respondent Emerson Manufacturing Corporation has the legal authority to bind the Respondent to the terms and conditions of this Order.

Termination

33. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

FOR RESPONDENT EMERSON MANUFACTURING COMPANY:

Mike Burns
Name

5-9-2013
DATE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Issued this 14th day of May, 2013.

Karen A. Flournoy
Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Christopher Muehlberger
Christopher Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Mike Burns
Division Manager
Emerson Manufacturing Corporation
608 Industrial Road
Pender, Nebraska 68047.

5.17.13
Date

ATTACHMENT 1

**to Administrative Order for Compliance on Consent
United States Environmental Protection Agency, Region 7, Docket No. CWA-07-2013-0016**

Industrial User: Emerson Manufacturing Corporation
608 Industrial Drive
P. O. Box 10
Pender, NE 68047
Standard Industrial Classification (SIC) = 3569

POTW: The Village of Pender POTW
Thurston County, Nebraska.
Latitude (FLAT) = 42°06'22.3"
Longitude (FLON) = 96°41'37.8"
USGS Hydrologic Basin Code (FHBC) = 10220004
Standard Industrial Code (SIC) = 4952

PART I - EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. FACILITY DESCRIPTION

The Emerson facility contains two businesses, Emerson Manufacturing Corporation and DMD Manufacturing, which are owned and operated by Emerson Manufacturing Corporation. The businesses manufacture a variety of jacks for different applications, drum caddies, and truck ramps and stands. The manufacturing processes consist primarily of laser cutting, phosphate coating, metal fabrication and machining. Process wastewater is generated in the powder coating bay. In addition, non-contact cooling water is produced in the metal fabrication process. Process wastewater produced during powder coating by batch process is discharged to the Village of Pender sanitary sewer connection located on the south side of the facility.

B. DESCRIPTION OF DISCHARGE POINT

The authorization to discharge provided under this Order on Consent is limited to the outfall specifically designated below as a discharge location. Discharge at any location not authorized under this Order on Consent is a violation of the Clean Water Act (CWA) and could subject the person(s) responsible for such a discharge to penalties under Section 309. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from first learning of the unauthorized discharge could subject such a person to criminal penalties as provided under the CWA.

Outfall Number

Description of Discharge Point

001

The drain pit to the sewer next to the powder coating booth located on the west side of the building.

C. **Outfall 001 - SPECIFIC EFFLUENT LIMITATIONS AND SELF-MONITORING REQUIREMENTS**

Emerson Manufacturing Corporation agrees to discharge from outfall (001) to the Village of Pender Wastewater Treatment Facility as specified in this Order on Consent and its Attachments. The effluent limitations below shall be met on the effective date of this Order.

Outfall 001 – Effluent Limits and Monitoring Requirements:

1. Controlled discharge is authorized from the facility through Outfall 001 to the Village of Pender WWTF.
2. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. Monitoring shall be conducted by sampling after treatment processes and prior to the introduction of sanitary and other non-categorically defined dilution flows. All equipment used for sampling and analysis must be routinely calibrated, inspected and maintained to ensure accuracy.
3. The Emerson Manufacturing Corporation shall submit semi-annual Discharge Monitoring Reports (DMRs) to EPA with a copy to the Village of Pender. The initial reporting period shall begin upon the Order on Consent effective date. Monitoring reports shall be submitted using the enclosed forms on or before the 28th day of January and July to the address shown below. In the event no discharge occurs during the period, written notification is still required and will consist of an entry of “NO DISCHARGE DURING THIS REPORTING PERIOD” on the DMR.

Chief, Water Enforcement Branch
Water, Wetlands and Pesticides Division
Environmental Protection Agency
Region 7
11021 Renner Boulevard
Lenexa, KS 66219

4. The Emerson Manufacturing Corporation, as a metal finisher, is subject to the Metal Finishing Point Source Category Pretreatment Standards at 40 C.F.R. Part 433.15 and must adhere to the regulations.
5. All sample collection and analysis under this Order on Consent shall be consistent with methods approved under 40 C.F.R. Part 136.
6. Emerson Manufacturing shall orally report any noncompliance that may endanger health or the environment as soon as possible, but no later than 24 hours from the time Emerson Manufacturing becomes aware of the circumstances. The oral report shall be made to the EPA Spill Hotline at (913) 281-0991 and to the Village of Pender at 402-385-3321.

7. Emerson Manufacturing shall orally report any slug discharge that has a flow rate or concentration, which could cause a violation of the General Prohibited Standards section of this Order. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the Village's NPDES permit. The oral report shall be made to the EPA Spill Hotline at (913) 281-0991 and to the Village of Pender at 402-385-3321.
8. The Emerson Manufacturing Corporation shall comply with the effluent limitations and monitoring requirements in the table below.
9. If the results of the Emerson Manufacturing wastewater analysis indicates a violation has occurred, Emerson Manufacturing must notify the EPA and the Village of Pender within 24 hours of becoming aware of the violation and repeat the sampling and pollutant analysis and submit, in writing, the results of this repeat analysis within 30 days after becoming aware of the violation.

EFFLUENT POLLUTANT PARAMETERS AND MONITORING FREQUENCY			
Effluent Parameters	Discharge Limits⁽¹⁾	Measurement Frequency	Sample Type
Effluent Flow	Average Gallons per day	Continuous	Calculated or Measured ⁽²⁾
pH	6.5 - 9.0 Standard Units	Semi-Annually	Grab
Zinc, Total ⁽⁵⁾	Monthly Average -- 1.48 mg/L Daily Max -- 2.61 mg/L	Semi-Annually	Composite ⁽⁵⁾
Cadmium, Total ⁽⁵⁾	Monthly Average -- 0.26 mg/L Daily Max -- 0.69 mg/L	Semi-annually	Composite ⁽⁵⁾
Chromium, Total ⁽⁵⁾	Monthly Average -- 1.71 mg/L Daily Max -- 2.77 mg/L	Semi-annually	Composite ⁽⁵⁾
Copper, Total ⁽⁵⁾	Monthly Average -- 2.07 mg/L Daily Max -- 3.38 mg/L	Semi-annually	Composite ⁽⁵⁾
Lead, Total ⁽⁵⁾	Monthly Average -- 0.43 mg/L Daily Max -- 0.69 mg/L	Semi-annually	Composite ⁽⁵⁾

Effluent Parameters	Discharge Limits⁽¹⁾	Measurement Frequency	Sample Type
Nickel, Total ⁽⁵⁾	Monthly Average -- 2.38 mg/L Daily Max – 3.98 mg/L	Semi-annually	Composite ⁽⁵⁾
Silver, Total ⁽⁵⁾	Monthly Average -- 0.24 mg/L Daily Max – 0.43 mg/L	Semi-annually	Composite ⁽⁵⁾
Cyanide, Total ⁽⁵⁾	Monthly Average -- 0.65 mg/L Daily Max – 1.20 mg/L	Semi-annually	Grab
Total Toxic Organics (TTO) ⁽³⁾	Daily Max – 2.13 mg/L	Semi-Annually	Composite ⁽⁵⁾ /Grab ⁽⁴⁾

- (1) The discharge limits established in this Order will not preclude Emerson Manufacturing Corporation from meeting limits established by the Village of Pender.
- (2) The Emerson Manufacturing Corporation shall use a flow measuring device or procedure that meets the 40 C.F.R. 136 requirement of +/- 10% accuracy.
- (3) 40 C.F.R. § 433.12(a) requires Emerson Manufacturing Corporation to sample for either Total Toxic Organics (TTO) semi-annually or to develop a Toxic Organic Management Plan to manage and prevent TTOs from entering the POTW. If Emerson Manufacturing Corporation elects to develop and implement a TOMP to forego sampling for TTO semi-annually, the TOMP must be reviewed and approved by the EPA and include all TTO substances used and stored on-site. An approved TOMP will be updated every five years or upon any changes in process wastewater being discharged from Emerson Manufacturing Corporation. A “toxic” or “priority” pollutant is one of 126 substances listed as toxic under the CWA Section 307(a)(1), 33 U.S.C. § 1317(a)(1).
- (4) The total toxic organics and analysis requires two samples. A composite sample is collected for the extractable compounds and a grab sample is collected for the volatile compounds.
- (5) Emerson Manufacturing shall utilize the flow proportional composite sample technique, as outlined in the Definitions section below.

PART II - STANDARD CONDITIONS

A. GENERAL CONDITIONS

1. Duty to Mitigate

The Emerson Manufacturing Corporation shall take all reasonable steps to minimize or correct any adverse impact to the Village of Pender Wastewater Treatment Facility or the environment resulting from noncompliance with this Order, including such accelerated or additional monitoring as necessary to determine the nature and impact of the discharge.

2. Definitions

- a) Daily Maximum - The maximum allowable discharge of pollutant during a calendar day. Where daily maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
- b) Composite Sample - A sample that is collected over time, formed either by continuous sampling or by mixing discrete samples. The sample may be composited either as a time composite sample: composed of discrete sample aliquots collected in one container at constant time intervals providing representative samples irrespective of stream flow; or as a flow proportional composite sample: collected either as a constant sample volume at time intervals proportional to stream flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots. Emerson Manufacturing may utilize either the flow proportional composite sample technique or the time composite sample technique.
- c) Grab Sample - An individual sample collected in less than 15 minutes, without regard for flow or time.
- d) Instantaneous Maximum Concentration - The maximum concentration allowed in any single grab sample.
- e) Cooling Water -
 - (1) Uncontaminated: Water used for cooling purposes only which has no direct contact with any raw material, intermediate, or final product and which does not contain a level of contaminants detectably higher than that of the intake water.
 - (2) Contaminated: Water used for cooling purposes only which may become contaminated either through the use of water treatment chemicals used for corrosion inhibitors or biocides, or by direct contact with process materials and/or wastewater.

- f) Monthly Average - The arithmetic mean of the values for effluent samples collected during a calendar month or specified 30 day period (as opposed to a rolling 30 day window).
- g) Weekly Average - The arithmetic mean of the values for effluent samples collected over a period of seven consecutive days.
- h) Bi-Weekly - Once every other week.
- i) Bi-Monthly - Once every other month.
- j) Upset - Means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based Order effluent limitations because of factors beyond the reasonable control of Emerson Manufacturing, excluding such factors as operational error, improperly designed or inadequate treatment facilities, or improper operation and maintenance or lack thereof.
- k) Bypass – Means the intentional diversion of wastes from any portion of a treatment facility.

3. General Prohibitive Standards

Emerson Manufacturing shall not discharge wastewater to the sewer system:

- a) Having a temperature higher than 104 degrees F (40 degrees C);
- b) Containing more than 100 ppm by weight of fats, oils, and grease;
- c) Containing any gasoline, benzene, naptha, fuel oil or other flammable or explosive liquids, solids or gases; and in no case pollutants with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (60 degrees C), or pollutants which cause an exceedance of 10 percent of the Lower Explosive Limit (LEL) at any point within the POTW.
- d) Containing any garbage that has not been ground by household type or other suitable garbage grinders;
- e) Containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch, manure, or any other solids or viscous substances capable of causing obstructions or other interferences with proper operation of the sewer system;

- f) Having a pH lower than 5.0 or higher than 11.0, or having any other corrosive property capable of causing damage or hazards to structures, equipment or personnel of the sewer system;
- g) Containing toxic or poisonous substances in sufficient quantity to injure or interfere with any wastewater treatment process, to constitute hazards to humans or animals, or to create any hazard in waters which receive treated effluent from the sewer system treatment plant. Toxic wastes shall include, but are not limited to wastes containing cyanide, chromium, cadmium, mercury, copper, and nickel ions;
- h) Containing noxious or malodorous gases or substances capable of creating a public nuisance; including pollutants which result in the presence of toxic gases, vapors, or fumes;
- i) Containing solids of such character and quantity that special and unusual attention is required for their handling;
- j) Containing any substance which may affect the treatment plant's effluent and cause violation of the NPDES Order requirements;
- k) Containing any substance which would cause the treatment plant to be in noncompliance with sludge use, recycle or disposal criteria pursuant to guidelines or regulations developed under section 405 of the Federal Act, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or other regulations or criteria for sludge management and disposal as required by the State;
- l) Containing color which is not removed in the treatment processes;
- m) Containing any medical or infectious wastes;
- n) Containing any radioactive wastes or isotopes; or
- o) Containing any pollutant, including BOD pollutants, released at a flow rate and/or pollutant concentration which would cause interference with the treatment plant.

4. Compliance with Applicable Pretreatment Standards and Requirements

Compliance with this Order on Consent does not relieve Emerson Manufacturing from its obligations regarding compliance with any and all applicable local, state, and federal pretreatment standards and requirements including any such standards or requirements that may become effective during the term of this Order.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

Emerson Manufacturing shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of this Order. Proper operation and maintenance includes but is not limited to: effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the Order.

2. Duty to Halt or Reduce Activity

Upon reduction of efficiency of operation, or loss or failure of all or part of the treatment facility, Emerson Manufacturing shall, to the extent necessary to maintain compliance with its Order, control its production or discharges (or both) until operation of the treatment facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced. It shall not be a defense for Emerson Manufacturing in an enforcement action that it would have been necessary to halt or reduce the Ordered activity to maintain compliance with the conditions of this Order.

3. Bypass of Treatment Facilities

- a) Bypass is prohibited unless it is unavoidable to prevent loss of life, personal injury, or severe property damage or no feasible alternatives exist.
- b) Emerson Manufacturing may allow bypass to occur which does not cause effluent limitations to be exceeded, but only if it is also for essential maintenance to assure efficient operation.
- c) Notification of bypass:
 - (1) Anticipated bypass. If Emerson Manufacturing knows in advance of the need for a bypass, it shall submit prior written notice, at least ten days before the date of the bypass, to the Region 7 EPA Water Enforcement Branch Chief and to the Village of Pender.
 - (2) Unanticipated bypass. Emerson Manufacturing shall immediately notify the Region 7 EPA Water Enforcement Branch Chief and submit a written notice to the EPA and the Village of Pender within five days. This report shall specify:
 - (i) A description of the bypass, and its cause, including its duration;
 - (ii) Whether the bypass has been corrected; and
 - (iii) The steps being taken or to be taken to reduce, eliminate and prevent a reoccurrence of the bypass.

4. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in accordance with section 405 of the CWA and Subtitles C and D of the Resource Conservation and Recovery Act.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this Order and, unless otherwise specified, before the 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 their accuracy. Monitoring points shall not be changed without notification to and the approval of the Region 7 EPA Water Enforcement Branch Chief.

2. Flow Measurements

Flow measurement is required by this Order on Consent. The appropriate flow measurement devices and methods consistent with approved scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation +/- 10 percent from true discharge rates throughout the range of expected discharge volumes.

3. Analytical Methods to Demonstrate Continued Compliance

All sampling and analysis required by this Order shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 and amendments thereto, otherwise approved by EPA, or as specified in this Order.

4. Additional Monitoring by Emerson Manufacturing

If the Emerson Manufacturing monitors any pollutant more frequently than required by this Order, using test procedures identified in Section C.3, the results of this monitoring shall be included in the semi-annual Discharge Monitoring Reports.

5. Inspection and Entry

Emerson Manufacturing shall allow the Region 7 EPA, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a) Enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
- b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
- c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order;
- d) Sample or monitor, for the purposes of assuring compliance, any substances or parameters at any location; and
- e) Inspect any production, manufacturing, fabricating, or storage area where pollutants, regulated under this Order, could originate, be stored, or be discharged to the Village of Pender sewer system.

6. Retention of Records

- a) Emerson Manufacturing shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Region 7 EPA Water Enforcement Branch Chief at any time.
- b) All records that pertain to matters that are the subject of enforcement or litigation activities brought by the Region 7 EPA shall be retained and preserved by the Emerson Manufacturing until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

7. Record Contents

Records of sampling and analyses shall include:

- a) The date, exact place, 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 were performed;
- d) Who performed the analyses;
- e) The analytical techniques or methods used; and
- f) The results of such analyses.

8. Falsifying Information

Knowingly making any false statement on any report or other document required by this Order or knowingly rendering any monitoring device or method inaccurate, is a crime and may result in the imposition of criminal sanctions and/or civil penalties.

SECTION D. ADDITIONAL REPORTING REQUIREMENTS

1. Planned Changes

Emerson Manufacturing shall give notice to the Region 7 EPA Water Enforcement Branch Chief and the Village of Pender at least 90 days prior to any facility expansion, production increase, or process modifications which results in new or substantially increased discharges or a change in the nature of the discharge.

2. Anticipated Noncompliance

Emerson Manufacturing shall give advance notice to the Region 7 EPA Water Enforcement Branch Chief and the Village of Pender of any planned changes in the facility or activity which may result in noncompliance with Order requirements.

3. Reporting Requirements

If the results of the Emerson Manufacturing wastewater analysis indicate that a violation of the limits set forth in this Order has occurred, Emerson Manufacturing shall:

- a. Inform EPA and the Village of Pender of the violation within 24 hours; and
- b. Repeat the sampling and analysis and submit, to EPA with a copy to the Village of Pender in writing, the results of the second analysis within 30 days of the first violation; and
- c. All reports required by this Order shall be submitted to the EPA at the following address:

Chief, Water Enforcement Branch
Water, Wetlands and Pesticides Division
U. S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

4. Duty to Provide Information

Emerson Manufacturing shall furnish to the Region 7 EPA, within 10 days any information which EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order, or to determine compliance with this Order. Emerson Manufacturing shall also, upon request, furnish to the EPA within 10 days copies of any records required to be kept by this Order.

5. Signatory Requirements

All applications, reports, or information submitted to the Region 7 EPA must contain the following certification statement:

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 violations.

- a) All submittals must be signed by a responsible corporate officer of Emerson Manufacturing Corporation. For the purpose of this paragraph, a responsible corporate officer means:
 - (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy – or decision-making functions for the corporation, or;
 - (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- b) By a general partner or proprietor, if Emerson Manufacturing Corporation is a partnership or sole proprietorship.
- c) The principal executive officer or director having responsibility for the overall operation of the Emerson Manufacturing facility in the Village of Pender.
- d) By a duly authorized representative of the individual designated in paragraph (a), (b), or (c) of this section if:

- (i) the authorization is made in writing by the individual described in paragraph (a), (b), or (c);
 - (ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the Emerson Manufacturing, such as the position of plant manager, operator of a well, or a well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the Corporation; and
 - (iii) the written authorization is submitted to the EPA Water Enforcement Branch Chief.
- e) If an authorization under paragraph (d) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for the environmental matters for the Corporation, a new authorization satisfying the requirements of paragraph (d) of this section must be submitted to the EPA Water Enforcement Branch Chief prior to or together with any reports to be signed by an authorized representative.

6. Operating Upsets

Should Emerson Manufacturing experience an upset in operations that places it in a temporary state of noncompliance with the provisions of either this Order or with the Village of Pender ordinances, Emerson Manufacturing shall inform the EPA Region 7 Water Enforcement Branch Chief within 24 hours of becoming aware of the upset at 913-551-7777 or 913-281-0991 after 5 p.m. Monday – Friday or weekends and holidays and the Village of Pender at 402-385-3321.

A written follow-up report of the upset shall be filed by Emerson Manufacturing with the R7 EPA Water Enforcement Branch Chief with a copy to the Village of Pender within five days. The report shall specify:

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

7. **Civil and Criminal Liability**

Nothing in this Order on Consent shall be construed to relieve Emerson Manufacturing from civil and/or criminal penalties for noncompliance under 40 C.F.R. 433 or State or Federal laws or regulations.