

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY -6 AM 8:36
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2008-0046
Esselte Corporation)	
850 West Park)	
Union, Missouri 63084)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent)	
)	
Proceeding under Section 309(g)(2)(B))	
of the Clean Water Act,)	
33 U.S.C. § 1319(g)(2)(B))	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Esselte Corporation (Respondent) have agreed to a settlement of this action before the 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), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 307 of the CWA, 33 U.S.C. § 1317, and regulations promulgated thereunder.

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. 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.

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.

6. 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 \$137,500, 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 \$157,500, may be assessed for violations of the CWA occurring after March 15, 2004. Based upon the facts alleged in this Consent Agreement and 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 and Final Order.

Parties

7. 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 and 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.

8. Respondent is Esselte Corporation, a corporation incorporated in the state of New York, and registered to do business in the state of Missouri.

Statutory and Regulatory Framework

9. 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).

10. 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. 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.

11. 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.

12. 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.

Factual Background

13. Esselte Corporation (Respondent), is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

14. 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 (Facility).

15. 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.

16. 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).

17. 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).

18. 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.

19. The City's NPDES Permit contains limitations for discharges of effluent from the City's POTW to the Bourbeuse River.

20. 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.

21. 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).

22. The Respondent's process wastewater discharged to the City's POTW 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.

23. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

24. 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).

Findings of Violation

25. The facts stated above are hereby incorporated by reference.

26. 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.

27. 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.

28. 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.

29. 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.

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

CONSENT AGREEMENT

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

32. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, 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 and Final Order.

33. Respondent neither admits nor denies the factual allegations set forth above.

34. 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 Final Order portion of this Consent Agreement and Final Order.

35. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

36. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Water Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the Clean Water Act or other applicable law.

37. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 307 of the Clean Water Act, 33 U.S.C. §1317, and regulations promulgated thereunder.

38. The effect of settlement described in paragraph 36 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 37, above, of this Consent Agreement and Final Order.

39. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order

40. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

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

FINAL ORDER

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of One Hundred Five Thousand Dollars (\$105,000), within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference docket number CWA-07-2008-0046.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

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

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to 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 and Final Order.

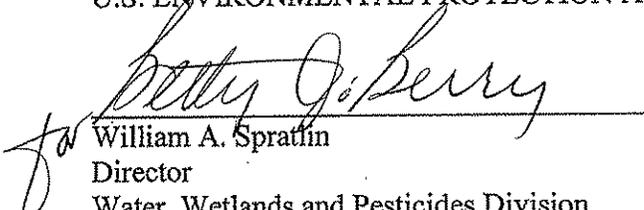
7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date that it is signed by the Regional Judicial Officer. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such effective date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

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

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

03/20/08
Date

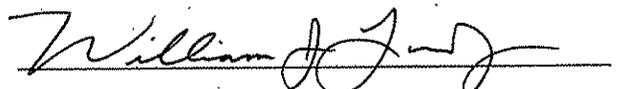

for William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

3.20.08
Date


Sarah Thibos LaBoda
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
ESSELTE CORPORATION

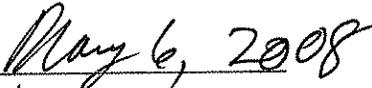
17 March 2008
Date


Name (Print) William J. Lundregan
Title Vice President

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



Robert Patrick
Regional Judicial Officer



Date

IN THE MATTER OF Esselte Corporation, Respondent
Docket No. CWA-07-2008-0046

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order 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:

Matthew Narensky, Esq.
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94101-2878

Dated: 5/6/08



Kathy Robinson
Hearing Clerk, Region 7