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12/6/2023

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**U.S. EPA REGION 8
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	
)	Docket No. CWA-08-2024-0002
Jabil Inc.)	
)	ADMINISTRATIVE ORDER ON CONSENT
)	
)	
Respondent)	

INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and Jabil Inc. (Jabil or Respondent) to carry out the goals of section 101(a) of the Clean Water Act (CWA), 33 U.S.C. § 1251(a) to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
2. This Consent Order is issued under the authority of section 309(a) of the CWA, 33 U.S.C. § 1319(a).
3. The Findings of Fact and of Violation (Findings) in paragraphs 16 through 48, below, are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the Findings. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent further agrees not to challenge the jurisdiction of the EPA or any of the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

STATUTORY AND REGULATORY BACKGROUND

4. The CWA prohibits any discharge of pollutants from a point source into navigable waters, except in compliance with certain other provisions of the CWA. 33 U.S.C. §§ 1311(a), 1362(6), 1362(7), 1362(12), and 1362(14).
5. Section 402 of the CWA, 33 U.S.C. § 1342, allows discharges of pollutants to navigable waters as authorized by National Pollutant Discharge Elimination System (NPDES) permits. The EPA, and states with NPDES programs approved by the EPA, may issue NPDES permits that authorize discharges of pollutants into waters of the United States, subject to conditions and limitations set forth in such permits. 33 U.S.C. § 1342.

6. Among the types of dischargers that can receive NPDES permits authorizing pollutants to be discharged into navigable waters are publicly owned treatment works, or POTWs. The term POTW encompasses a treatment works itself and a municipality with jurisdiction over discharges to and from such a treatment works. 40 C.F.R. § 403.3(q).
7. Section 307 of the CWA, 33 U.S.C. § 1317, directed the EPA to promulgate regulations establishing pretreatment standards for introducing pollutants into POTWs. The EPA has promulgated regulations at 40 C.F.R. part 403 (General Pretreatment Regulations) and at 40 C.F.R. parts 405 through 471 (Categorical Pretreatment Standards). These regulations are designed to regulate the introduction of pollutants into POTWs that are determined not to be susceptible to treatment by such treatment works or that could interfere with the operation of such treatment works.
8. Non-domestic sources that introduce pollutants into POTWs are known as Industrial Users or IUs, as defined in 40 C.F.R. § 403.3(j).
9. The introduction of pollutants from an IU to a POTW is known as an “Indirect Discharge” or a “Discharge,” as defined in 40 C.F.R. § 403.3(i). Unless otherwise stated, any reference in this Consent Order to a “discharge” shall refer to the introduction of pollutants to a POTW, as distinguished from the POTW’s discharge of pollutants to navigable waters.
10. According to 40 C.F.R. § 403.3(v), the term Significant Industrial User, also referenced as SIU, includes, with exceptions not relevant here (and provided in 40 C.F.R. §§ 403.3(v)(2) and 403.3(v)(3)):
 - i. any IU subject to the Categorical Pretreatment Standards; and
 - ii. any other IU that:
 - discharges an average of at least 25,000 gallons per day of process wastewater (excluding sanitary, non-contact cooling and boiler blowdown water) to a POTW;
 - contributes a process wastestream that makes up five or more percent of the average dry weather hydraulic or organic capacity of the POTW’s treatment plant; or
 - is designated by the relevant Control Authority (defined in 40 C.F.R. § 403.3(f)) as an SIU on the basis of having a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or requirement (in accordance with 40 C.F.R. § 403.8(f)(6)). (The terms Pretreatment Standard and Pretreatment Requirement are defined in 40 C.F.R. §§ 403.3(l) and 403.3(t).)
11. The EPA has established Categorical Pretreatment 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.

12. One industrial category for which the EPA has established Categorical Pretreatment Standards is the Metal Finishing Point Source Category. *See* 40 C.F.R. part 433.
13. Under the EPA's General Pretreatment Regulations, IUs subject to Categorical Pretreatment Standards are required to sample, analyze, and submit periodic reports of the nature and concentration of discharged pollutants subject to the relevant Categorical Pretreatment Standards and to provide notifications and conduct repeat analyses in the event of violations. 40 C.F.R. § 403.12. In addition, there are specialized definitions and monitoring requirements specific to the Metal Finishing Point Source Category found at 40 C.F.R. part 433.
14. The applicable effluent limits are listed in the pretreatment standards for new sources at 40 C.F.R. § 433.17(a).
15. For Respondent, the effluent limits are determined by the Categorical Limits listed in 40 C.F.R. § 433.17(a), and the Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e), which establishes alternative concentration limits. The effluent limits are documented in the Notification of Discharge Requirements fact sheet (Figure 7). *See also* Notification of Discharge Requirements CO-PF00101.

FINDINGS

16. Respondent is a for-profit corporation incorporated under the laws of the State of Delaware, and is authorized to do business in Colorado.
17. As a corporation, Respondent is a "person" as defined by section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
18. At all times relevant to this Consent Order, Respondent has owned and operated a titanium and stainless-steel screw, screw blank, and nail manufacturing facility (Facility) used in orthopedic devices located at 1051 Synthes Avenue, Monument, Colorado.
19. The Facility discharges industrial process wastewater containing pollutants, as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6), to a publicly owned treatment works (POTW), which includes the Tri-Lakes Wastewater Treatment Facility and the Monument Sanitation District collection system.
20. To date, the State of Colorado has not obtained EPA approval of its authority to administer the pretreatment component of the NPDES program. Accordingly, the EPA administers the pretreatment component of the NPDES program in Colorado.
21. The EPA has not required the Monument Sanitation District and/or Tri-Lakes Wastewater Treatment Facility to develop an EPA-approved pretreatment program in accordance with 40 C.F.R. § 403.8(a). Therefore, the EPA is the pretreatment Control Authority, as defined in 40 C.F.R. § 403.3(f), for Respondent.

22. The Tri-Lakes Wastewater Treatment Facility treats domestic and industrial wastewater that is received from the Monument Sanitation District collection system and both entities meet the definition of a POTW under 40 C.F.R. § 403.3(q). The Tri-Lakes Wastewater Treatment Facility is located at 16510 Mitchell Avenue, Monument, Colorado 80132.
23. The POTW discharges into Monument Creek, which is within the Fountain Creek Watershed, and is considered a “navigable water,” as defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7).
24. The POTW is a “point source” that “discharges” “pollutants,” as these terms are defined by section 502, subsections (14), (12), and (6) of the CWA, 33 U.S.C. § 1362, subsections (14), (12), and (6), respectively.
25. The Facility is subject to the Pretreatment Standards for the Metal Finishing Point Source Category, 40 C.F.R. part 433, and to the General Pretreatment Regulations.
26. Subpart A of the Pretreatment Standards for the Metal Finishing Point Source Category, 40 C.F.R. part 433 was promulgated on July 15, 1983 (48 Fed. Reg. 32485).
27. The Facility began operations in 1979, with the current metal finishing processes beginning in 1992. Respondent performs anodizing and coating processes (electropolishing and passivation), which produces process wastewater that is regulated by the Metal Finishing Point Source Category Pretreatment Standards in 40 C.F.R. part 433.
28. For purposes of subpart A of the Pretreatment Standards for the Metal Finishing Point Source Category Pretreatment Standards, the Facility is a “new source” as defined in 40 C.F.R. § 403.3(m)(1) and is subject to 40 C.F.R. § 433.17.
29. As an IU that discharges wastewater regulated by 40 C.F.R. part 433, Respondent is an SIU.
30. Respondent is subject to EPA’s Notification of Discharge Requirements CO-PF00101 and accompanying fact sheet, which became effective on May 26, 2020. The Notification of Discharge Requirements authorize Respondent to discharge subject to the Metal Finishing Point Source Category Pretreatment Standards at 40 C.F.R. part 433.
31. As an IU subject to a Categorical Pretreatment Standard (40 C.F.R. § 403.12(e)), and per the Notification of Discharge Requirements, Respondent is required to submit quarterly compliance reports to the EPA indicating the nature and concentration of pollutants limited by 40 C.F.R. part 433.
32. As an IU subject to the General Pretreatment Regulations, Respondent is required to notify the EPA and to conduct repeat sampling in the event any sampling it performs indicates a violation of a Pretreatment Standard. 40 C.F.R. § 403.12(g)(2).

33. On January 24, 2023, Respondent notified the EPA that the Facility failed to take a representative discharge sample for the fourth quarter of 2022, as required by the Notification of Discharge Requirements CO-PF00101.
34. Respondent's first quarterly self-monitoring report for 2023, indicated that a sample collected on March 1, 2023, exceeded both the daily maximum and monthly average effluent limitations for zinc. Respondent did not notify EPA or the POTW within 24 hours of becoming aware of these violations. Upon reanalysis of the March 1, 2023 sample with 40 C.F.R. § 136 approved analytical methods, sample results also indicated an exceedance in nickel for the monthly average in addition to the zinc daily maximum and monthly average exceedance listed above. These exceedances resulted in significant non-compliance by Respondent.

Violation of Daily and Monthly Average Zinc Limitation

35. For discharges of zinc to the POTW, the Respondent is subject to a daily maximum limit of 1.85 milligrams per liter (mg/l) for discharges from the Facility. *See* 40 C.F.R. § 433.17(a) and Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e). *See also* Notification of Discharge Requirements CO-PF00101.
36. As documented in reports Respondent submitted to the EPA, Respondent violated the zinc daily maximum effluent limit of 40 C.F.R. § 433.17(a) and Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e) for discharges from the Facility. *See also* Notification of Discharge Requirements CO-PF00101. The sample collected on March 1, 2023 (13.0 mg/L result) exceeded the daily maximum limit of 1.85 mg/L. This was the only reported zinc sample collected between October 1, 2022 and March 31, 2023. Therefore, 100% of the samples collected in the 6-month period (fourth quarter of 2022 and first quarter of 2023) exceeded the daily maximum limit, resulting in a significant non-compliance (SNC) chronic violation for zinc for the first quarter 2023.
37. This violation also exceeded the technical review criteria (TRC) daily maximum limit (zinc daily maximum limit of 1.85 mg/L x TRC value of 1.2 = 2.2 mg/L) resulting in a SNC TRC violation for the daily maximum limit for the first quarter of 2023.
38. For discharges of zinc to the POTW, the Respondent is subject to a monthly average limit of 1.05 mg/l for discharges from the Facility. *See* 40 C.F.R. § 433.17(a) and Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e). *See also* Notification of Discharge Requirements CO-PF00101.
39. As documented in reports Respondent submitted to the EPA, Respondent violated the zinc monthly average effluent limit of 40 C.F.R. § 433.17(a) and Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e) for discharges from the Facility during March 2023. *See also* Notification of Discharge Requirements CO-PF00101. Specifically, the result for the zinc sample taken on March 1, 2023, was 13.0 mg/l for the monthly average because this was the only reported zinc sample collected between October 1, 2022, and March 31, 2023. Therefore, 100% of the monthly average samples collected in the 6-month period (fourth quarter of 2022 and first quarter

of 2023) exceeded the monthly average limit, resulting in a SNC chronic violation for zinc for the first quarter 2023.

40. This violation also exceeded the TRC monthly average limit (zinc monthly average limit of 1.05 mg/L x TRC value of 1.2 = 1.26 mg/L) resulting in a SNC TRC violation for the monthly average limit for the first quarter of 2023.

Violation of Monthly Average Nickel Limitation

41. For discharges of nickel to the POTW, the Respondent is subject to a monthly average of 1.68 mg/l for discharges from the Facility. *See* 40 C.F.R. § 433.17(a) and Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e). *See also* Notification of Discharge Requirements CO-PF00101.
42. As documented in reports Respondent submitted to the EPA, Respondent violated the nickel monthly average effluent limit of 40 C.F.R. § 433.17(a) and Combined Wastestream Formula calculations listed in 40 C.F.R. §403.6(e) for discharges from the Facility during March 2023. *See also* Notification of Discharge Requirements CO-PF00101. Specifically, the result for the nickel sample taken on March 1, 2023, was 2.63 mg/l for the monthly average because this was the only reported nickel sample for the fourth quarter of 2022 and first quarter of 2023 (6-month period).
43. Therefore, all of the monthly average samples collected in the 6-month period (fourth quarter of 2022 and first quarter of 2023) exceeded the monthly average limit, resulting in SNC chronic violation for first quarter of 2023.
44. This violation also exceeded the TRC monthly average limit (nickel monthly average limit of 1.68 mg/L x TRC value of 1.2 = 2.02 mg/L) resulting in a SNC TRC violation for the monthly average limit for the first quarter of 2023.

Violation of Notification Requirement

45. If any sampling performed by Respondent indicates a violation of a Pretreatment Standard, Respondent is required to notify the EPA within 24 hours of becoming aware of the violation. 40 C.F.R. § 403.12(g)(2).
46. Respondent failed to notify the EPA within 24 hours of becoming aware of the daily average zinc violation for the sample collected March 1, 2023, in violation of 40 C.F.R. § 403.12(g)(2).

Violation for Failure to Sample During the Monitoring Period

47. The Respondent is required to collect samples or measurements at the minimum frequency and using the sample type listed in Table 1 of the Notification of Discharge Requirements CO-PF00101. 40 C.F.R. § 403.12(e).
48. Respondent failed to collect an effluent sample during the 4th quarter of 2022.

ORDER FOR COMPLIANCE

Based on the foregoing Findings, the EPA orders, and Respondent agrees, as follows:

49. For each month during which Respondent discharges to the POTW, Respondent shall sample its discharge for zinc and nickel for the duration of the compliance schedule referenced in paragraph 51.
50. For each instance in which Respondent becomes aware of zinc or nickel concentration in exceedance of the discharge limitations, Respondent shall (a) within 24 hours notify the EPA of the sample result, and (b) within 30 days of the exceedance submit analytical results of re-sampling to the EPA. These notifications and submissions shall be provided as required by paragraph 51.a below.
51. Respondent shall (a) conduct and submit monthly effluent sampling data to the EPA for 12 consecutive months, (b) conduct an internal evaluation to identify the sources of the zinc and nickel in the operating processes, and (c) identify opportunities to reduce zinc and nickel levels below effluent limits.
 - a. On or before the first day of each month beginning **February 1, 2024**, Respondent shall submit the previous month's sample analysis reports and/or data by email to NPDES Enforcement Contact listed in paragraph 52 below.
 - b. Quarterly compliance monitoring reports are still required by 40 C.F.R. § 403.12(e), in addition to providing the monthly sample analysis reports. Quarterly compliance reports shall be submitted through NetDMR and include all sample analysis conducted during the quarter.
 - c. Respondent shall submit a final annual report as of the final compliance date of this Consent Order, **January 15, 2025**. The final report to the EPA must describe the actions Respondent has taken to comply with the terms of this Consent Order. This report should include, at a minimum,
 - Detailed summary of Respondent's investigation into the sources, or lack thereof, of zinc and nickel at the Facility.
 - Actions taken to reduce zinc and nickel to meet effluent limitations and identify opportunities to prevent potential future contamination of wastewaters.
 - A written certification to the EPA that Respondent has completed all monthly sampling and reporting of results as required by this Consent Order.

52. All submittals to the EPA required by this Consent Order shall be provided via U.S. mail and e-mail to:

Stephanie Passarelli
NPDES Inspector and Enforcement Officer
Enforcement and Compliance Assurance Division
U.S. EPA Region 8 (8ENF-W-NW)
1595 Wynkoop Street
Denver, Colorado 80202
passarelli.stephanie@epa.gov
303-312-6803

53. All submittals required by this Consent Order shall include the following certification statement, signed and dated by either a principal executive officer or 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.

54. At the EPA's sole discretion, the EPA may extend deadlines required by this Consent Order with written notice to Respondent, without further formal amendment of this Consent Order. All other modifications to this Consent Order may be made only by written agreement of the parties.

55. Upon completion of all requirements of this Consent Order, Respondent may submit a request for termination to the EPA, together with all necessary supporting documentation. Upon request from Respondent, EPA will confer with Respondent within 60 days of receiving Respondent's request to terminate. If the EPA finds it is appropriate to terminate this Consent Order, the EPA may do so unilaterally.

56. The provisions of this Consent Order are severable. If any provision of this Consent Order is determined to be unenforceable, the remaining provisions shall remain in full force and effect.

57. The Consent 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 Consent Order. No change in the ownership or operation of the Facility shall alter its responsibilities under this Consent Order unless the EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. A copy of this Consent Order shall be provided to any successors prior to such transfer. Additionally, 30 calendar days prior to such transfer, Respondent shall notify the EPA at the address specified in paragraph 52, above.

58. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories and consultants retained to perform or monitor any portion of the work called for by this Consent Order, on or before the date of such retention, and shall condition all such contracts on compliance with the terms of this Consent Order.
59. Compliance with this Consent Order shall not relieve Respondent of its obligations to comply with any applicable federal, state, or local requirements.
60. This Consent 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. The EPA retains the right to seek any and all remedies available under section 309 of the CWA, 33 U.S.C. § 1319, or any other authority, for any violation cited in this Consent Order.
61. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes the assessment of civil penalties of up to \$64,618 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation. Section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
62. This Consent Order shall be effective on the date it is filed with the Office of the Regional Hearing Clerk for EPA Region 8.
63. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to the EPA pursuant to this Order. The EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. part 2, subpart B.
64. The EPA and Respondent consent to service of the Consent Order by e-mail at the following valid e-mail addresses: jackson.laurianne@epa.gov (for Complainant), and Thomas_Kluck@jabil.com (for Respondent).

65. The undersigned representative of Respondent certifies s/he has the legal authority to bind Respondent to the terms and conditions of this Consent Order.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8**

Date: December 5, 2023

By: _____

Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance Assurance Division

**JABIL INC.
Respondent**

Date: 17-NOV-2023

By: _____



Thomas Kluck
Operations Director