

10 JUL 21 PM 1:52

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
)	CLEAN WATER ACT
)	SECTION 309 CLASS II
East Penn LLC)	CONSENT AGREEMENT
)	AND FINAL ORDER
Highway 2, Corydon, Iowa)	
)	
)	
Respondent.)	Docket No. CWA-07-2010-0090
_____)	

The United States Environmental Protection Agency (EPA), Region VII ("Complainant") and East Penn LLC ("East Penn" or "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).

A. FINDINGS OF VIOLATIONS

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 Sections 307 of the CWA, 33 U.S.C. § 1317, and the regulations promulgated thereunder at 40 C.F.R. Part 403.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region VII (Complainant).

4. Respondent East Penn LLC is a limited liability company registered under the laws of Iowa and authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

5. Section 301(a) of the Act, 33 U.S.C. § 1311 (a), prohibits discharge of pollutants from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. Section 402 provides that pollutants may be discharged into navigable waters of the United States only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that section. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works ("POTW").

6. To implement Section 307, 33 U.S.C. § 1317, EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations control the introduction of pollutants by industrial users into POTWs which may pass through or interfere with treatment processes of such treatment works, or which may contaminate sewage sludge.

7. 40 C.F.R. § 403.6 establishes "Categorical Standards" or national 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.

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

9. Manufacturers of lead acid batteries that discharge wastewater to a POTW are subject to the Categorical Battery Manufacturing Point Source Category Pretreatment Standards found at 40 C.F.R. Part 461. The Battery Manufacturing Standards are production based standards, which means that the pollutant levels allowed to be discharged are dependent on the number of batteries manufactured and the amount of lead used during manufacture.

10. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program. EPA authorized Iowa to administer the NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), August 10, 1978, and later authorized Iowa to administer the Pretreatment Program June 3, 1981. Accordingly, Iowa is the Pretreatment "Control Authority," as defined by 40 C.F.R. § 403.3(f).

11. Pursuant to 40 C.F.R. § 403.12(e), in order to document compliance with the production based limits of 40 C.F.R. Part 461, 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 (IDNR) that documents the nature and concentration of pollutants (lead), average and maximum daily flows, and other information needed to ascertain compliance.

EPA's Findings of Fact

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

13. The Corydon, Iowa, facility, addressed at Highway 2, P.O. Box 286 Corydon, Iowa ("Corydon facility," or "facility") was formerly owned by Voltmaster Battery and on November 1, 2006 was bought by Respondent East Penn LLC.

14. From November 1, 2006 through the present Respondent has at all relevant times been the "owner or operator" of the facility

15. The East Penn Corydon facility manufactures lead acid batteries. The manufacturing operation utilizes lead and lead oxide powder (paste) as the raw materials within the battery cells. Process wastewaters are produced by the battery washing operation, laundry operation and from clean up of the paste application and acid filling areas. In addition, contact cooling water is produced in the battery charging operation. Wastewater from the paste application and acid filling areas are collected into floor pits then either flow or are taken to the company's wastewater pretreatment system.

16. The City of Corydon ("the City"), Iowa, is a "person" as defined by Section 502 of the Act, 33 U.S.C. § 1362(5), that owns and operates a Publicly Owned Treatment Works (POTW) for the treatment of both domestic and industrial wastewater. The approximate location of the POTW is Section 30, T 69N, R21W, Wayne County, Iowa.

17. The City's POTW is a "point source" that "discharges pollutants" into an unnamed tributary to West Jackson Creek which is a tributary to the Chariton River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12). On or about May 3, 2001, IDNR issued the Corydon POTW a National Pollutant Discharge Elimination System (NPDES) permit, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (2001 Permit).

The 2001 Permit expired on May 2, 2006, but has been administratively continued since that date.

18. The unnamed tributary, West Jackson Creek and the Chariton River are each considered a "navigable water" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. In April 2008, Respondent installed a pretreatment system that the company estimates treats and discharges an average of approximately 5,000 gallons per day of wastewater to the City's WWTP. Respondent discharges process wastewater from the Corydon facility into the City's POTW, and therefore is an "industrial user," as defined by 40 C.F.R. § 403.3(h).

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

21. As a lead acid battery manufacturing facility, Respondent's Corydon facility is subject to the Battery Manufacturing Point Source Category Pretreatment Standards, at 40 C.F.R. Part 461, and is therefore considered a "Categorical" Industrial User and a "Significant Industrial User."

22. On July 20-23, 2009, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of the City of Corydon, Iowa ("City" or "Corydon POTW") in order to determine the City's compliance with the requirements of the CWA, 33 U.S.C. § 1281, *et seq.* During the inspection of the City's POTW, EPA discovered that the East Penn Corydon facility was discharging industrial process wastewater to the POTW.

23. As of the date of EPA's inspection, the East Penn facility had never applied for a pretreatment permit from IDNR, which is the pretreatment Control Authority. At the time of EPA's inspection, representatives of the City informed EPA that the City did not sample or routinely inspect East Penn to determine whether the company was performing monitoring sufficient to ensure that the East Penn facility was in compliance with the requirements of Section 307 of the CWA, and 40 C.F.R. Part 461.

24. For the period of Respondent East Penn's ownership, between November 2006 and EPA's inspection in July 2009, Respondent failed to perform required monitoring sufficient to determine compliance with 40 C.F.R. Part 461, and/or submit semi-annual reports to the Control Authority, as required by 40 C.F.R. § 403.12(e).

Claim I:

Failure to perform required Monitoring and Submit Bi-annual Reports

25. The facts stated in paragraphs A.10 through A.24, above, are hereby incorporated by reference.

26. Respondent East Penn's failure to perform required monitoring and/or submit required semi-annual Compliance Reports are violations of 40 C.F.R. 403.12(e), and Section 307 of the CWA, 33 U.S.C. § 1317.

Relief

27. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent, for the violations cited above, in the amount of \$53,547.

B. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. 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 this Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to each bear their own costs and attorney's fees incurred as a result of this action.
6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified in Claim I above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind the Respondent to the terms contained herein.

9. Respondent East Penn LLC hereby certifies that, as of the date that it executes this Consent Agreement and Final Order, it has taken steps to address the violations cited in Count I, above, and is currently performing monitoring adequate to determine and report current and future compliance with the requirements of 40 C.F.R. Part 461.

10. The effect of settlement described in Paragraph B.6, above, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph B.9, above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$53,547, as set forth in Paragraph C.1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

C. FINAL ORDER

Payment Procedures

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

1. Respondent shall pay a total mitigated civil penalty of Fifty Three Thousand, Five Hundred and Forty Seven Dollars (\$53,547) within thirty (30) days of the effective date of this Consent Agreement and Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

*In the matter of
East Penn LLC
Consent Agreement and Final Order
Page 7 of 9*

U.S. Environmental Protection Agency Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251:

The payment shall identify the Respondent by name and docket number (CWA-07-2010-0090).
Copies of the check shall be mailed to:

Howard C. Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th 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 Consent Agreement and Final Order shall apply to and be binding upon Respondents 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 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 past or future violations of the CWA and its implementing regulations and to enforce the terms

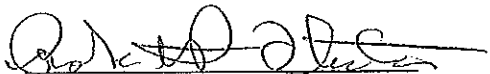
and conditions of this Consent Agreement and Final Order.

7. This Order shall be entered and become effective 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall each 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.

For the Respondent East Penn LLC:



Printed Name: ROBERT P. FLICKER
Title: VICE PRESIDENT

4/27/2010
Date

For the Complainant:
The United States Environmental Protection Agency


Howard C. Bunch
Sr. Assistant Regional Counsel

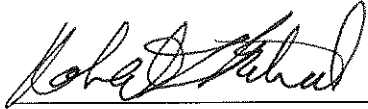
6/1/2010
Date


William A. Spratlin, Director
Water, Wetlands and Pesticides Division

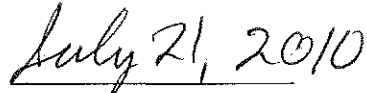
6/7/2010
Date

*In the matter of
East Penn LLC
Consent Agreement and Final Order
Page 9 of 9*

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



Robert Patrick
Regional Judicial Officer



Date

IN THE MATTER OF East Penn LLC, Respondent
Docket No. CWA-07-2010-0090

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:

Howard C. Bunch
Senior Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101


Copy by Certified Mail Return Receipt to:

Mark Winslow, Plant Manager
East Penn Manufacturing Co., Inc.
Highway 2
P.O. Box 286
Corydon, Iowa 50060

and

Louis Naugle
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222-2716

Dated: 7/22/10


Kathy Robinson
Hearing Clerk, Region 7