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Subject: Comments: US v Parker-Hannifin Corp, Civil Action No. 2:20-cv-11332; D.J. Ref. No. 90-5-1-1-12081
Date: Tuesday, December 22, 2020 11:43:47 AM

I am submitting these comments as outlined in the Federal Register Notice on December 21, 2020, regarding the US v. Parker-Hannifin Corp (defendant), D.J Ref. No. 90-5-1-1-12081.

As a general comment, the Consent Decree (CD) for Civil Action No. 2:20-cv-11332 was lacking and difficult to review on its own. I was hopeful that the Complaint would provide the details missing in the CD. This was not the case. Both documents were public noticed and these comments will be directed towards each document. The Litigation Report was not public noticed. My comments on the CD and Complaint reflect the facts presented by EPA and DOJ in the Complaint and CD, respectively. Neither DOJ or EPA provided any further information, documents, or data in regard to this public notice.

The Consent Decree

The objectives of an enforcement action, especially one that is a judicial action, is too (1) take away the
economic benefit of non-compliance; (2) punish the violator for their actions; and (3) to deter other IUs from similar violations. In certain cases where the violations are egregious, it would seem inappropriate to allow a defendant to not admit to violations. Specifically, it appears that DOJ is more concerned with settling this case than litigating it at the expense of the objectives of taking an enforcement action. As a matter of fact, this proposed CD would set a precedent for other industrial users that are violating the Clean Water Act (CWA) willingly.

The CD and underlying Complaint do not allow the public to understand the scope and extent of the alleged violations. The penalty may or may not be appropriate. We do not know the economic benefit that the IU has realized from not installing adequate treatment from at least February 2011 to the present. Further, DOJ is allowing this Defendant to discharge in violation of the CWA (until at least November 15, 2021). The CD allows the IU to continue to discharge wastewater that violates pretreatment standards if the IU pays a stipulated penalty to pollute. The stipulated penalty of $500 per violation for effluent violations (paragraph 30 of the CD) does not even escalate if the violations are serious enough to put the Defendant into Significant Non-Compliance. This is inappropriate. The per day stipulated penalty should clearly state that the violations are per day from the date of the measurement that shows a violation until the next measurement demonstrating the discharge complies. As a general comment: The stipulated penalties cited throughout the CD seem inappropriately low. These are more typical of penalties where the IU has cooperative and not a chronic violator. I would like to see a copy of the comments provided by the Defendant on the draft CD(s) as the CD as written would appear to be in the interest of the Defendant rather than the integrity of the CWA.

The CD defers to the City's Discharge Permit to establish requirements that the Defendant must meet. EPA and DOJ seem comfortable with whatever permit was issued by the City and not enforced from at least 2011 to the present. The monitoring frequency in the Defendants permit was insufficient years ago (i.e., twice per month) as the violations were occurring. It is inappropriate to rely on the judgement of the City. This IU should have continuous pH monitoring and daily monitoring for Biochemical Oxygen Demand (BOD). The Clean Water

Act relies on self-monitoring by the regulated community. The integrity of the CWA should be maintained.

The treatment system proposed in the CD is an evaporation system. If that costs too much or would not be projected to work, the Defendant could cease discharge from the processes that are causing a violation. It is unclear how the proposed treatment system would be classified by DOJ as an accepted treatment technology for the treatment of BOD and pH. Only a few industries have shown evaporation to be economically and technically effective. These are primarily industries that perform certain metal finishing or gold/silver refining operations. The energy costs (e.g., natural gas) can be prohibitively expensive where modest volumes of wastewater are evaporated. There are several past DOJ criminal cases against Industries that have tried to use evaporation on modest quantities of wastewater.

EPA and DOJ have not stated what the economic benefit portion of the penalty includes. Nor do we know how many violations occurred so an understanding of what the punitive portion of the penalty may be. In the EPA press release, the Agency states that "Parker Hannifin will spend $510,000 to install equipment that will ensure wastewater meets permit guidelines by November 2021." This would appear to be the capital cost of the equipment that they should have installed in at least January 2011 (not adjusted to 2011 costs) as accepted by EPA. In addition to capital costs, there are annual O&M costs, personnel costs, reporting costs, etc. These are all avoided costs (economic benefit). These costs should be the starting point for the penalty. EPA own Civil Penalty Policy states that a penalty shall remove the economic benefit of non-compliance. The Penalty Policy also includes factors for cooperativeness.

EPA's public notice of the enforcement action seems to incorrectly state that the Defendant will spend money to install treatment. The CD does not require installation of any treatment by the Defendant. It allows the Defendant to shut down that particular manufacturing line if ".... is not technically or economically feasible to use an evaporative treatment system to achieve compliance"….. This would allow the Defendant to benefit economically from not installing treatment to achieve compliance with pretreatment standards by deciding to shut down the manufacturing line. I am speculating that the Defendant had input into this part of the CD.

Aside from EPA and DOJ ignoring economic benefit in the penalty calculation (based upon the EPA Civil Penalty Policy)
appears to be nothing in the CD that specifies that installation of treatment and any other costs related to halting the violations would prevent the Defendant from deducting these costs ff their taxes as a business expense. The CD should specifically state that all costs of installing the treatment system and making it operational are part of the penalty are not tax deductible as specified in IRS rules. Further, the CD should state that if the Defendant does not install a treatment system, the $510,000 shall be remanded to DOJ as part of the cash penalty.

The EPA Penalty Policy also allows for adjustment of the punitive portion of the penalty for cooperativeness. The Complaint specifies that the Defendant entered into a voluntary formal enforcement action with EPA to install treatment and halt continuing violations in 2017. A compliance schedule was included for installation and operation of treatment by 11/30/17 to meet applicable pretreatment standards. As of 12/15/20, the IU had failed to install treatment and continued to violate pretreatment standards.

EPA and DOJ have used their considerable expertise to determine that a Civil Judicial Action

and proposed penalty is appropriate. Due to the lack of data and information as outlined above this appears to be in "the dark". It is time that the curtain is pulled back from the "wizard" and the agencies provide a more complete understanding how they are meeting the CWA and its implementing regulations. This commentor has worked administrative, civil, and criminal cases for EPA. This case stands out as atypical. It appears that there was an intent in the Complaint and CD to prevent the public from understanding the scope of the violations by the Defendant and how those were being addressed. Actual litigation is appropriate in some cases.

Comments on the Complaint

Paragraph 39: The City appears to have an approved program to implement and enforce a pretreatment program during all violations by Parker-Hannifin (the Industrial User or IU).

Paragraph 44, 45, 47: The City issues permits to IUs and this IU had a permit in-place during all violations being cited. The permit required BOD and pH monitoring to be completed twice per month.

Paragraph 48: This paragraph indicates that all self-monitoring reports were submitted to City as required. There is not affirmative statement that there were no violations for failure to report, incomplete reports, late reports, failure to notify, failure to resample, etc.).

Paragraph 50: EPA inspected IU on 2/11/15 and review previous 36 months of records and documented violations over the 36 months based upon the documents review. EPA did not refer to the findings of a Pretreatment Audit or Pretreatment Compliance Inspection that is performed on approved pretreatment programs. Further, there is no discussion of the Annual Pretreatment reports submitted by approved pretreatment programs that identify IU violations.

Paragraph 51: There is no enumeration or count of the violations that have occurred based upon the Defendants own monitoring. The Complaint refers to numerous (5,10, 100 or 5000?). The number of effluent violations reported by an IU is directly relevant to any penalty calculation that is completed. In addition, this data is used, in part, to complete the annual public participation requirement by the City to publish industrial users in Significant Non-Compliance. EPA did not identify if there were pH violations of pH<2 or greater than or equal
to 12.5 making the discharge a hazardous waste. Did the BOD or pH discharges cause or contribute to Pass Through or Interference?

Paragraph 52: This paragraph does not provide any insight as to why the Agency is the enforcement arm of the City.

Paragraphs 53-57: 3/13/17, IU voluntarily agreed to comply in a formal enforcement action taken
by EPA. A compliance schedule for treatment was included. The IU was allowed to continue discharging wastewater that violated City pretreatment standards. The IU was required to meet compliance schedule for installation of treatment and operation by 11/30/17. As of 12/15/20, Epa asserts that the IU had failed to install treatment and continued to violate local limits.

Paragraph 60-62: EPA has not documented the number of violations that have happened for

BOD or pH since January 2011. Each day is a separate and distinct violation. See comment on Paragraph 51 above.

Best regards,

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