

the Parties agree to comply with the terms of this CAFO as follows:

I. STATUTORY AND REGULATORY AUTHORITY

4. The objective of the CWA is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

5. The CWA prohibits any owner or operator of any source from operating that source in violation of any effluent standard or prohibition or pretreatment standard promulgated under Section 307 of the Act. 33 U.S.C. § 1317(d).

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership [or] association.”

7. Section 306(a)(3) of the CWA, 33 U.S.C. § 1316(a)(3), defines “source” as “any building, structure, facility, or installation from which there is or may be the discharge of pollutants.”

8. Section 502(11) of the CWA, 33 U.S.C. § 1362(11), defines the term “effluent limitation” to include any restriction EPA establishes on the quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of the United States.

9. The CWA establishes a statutory scheme for those sources of pollutants that are not directly discharged to waters of the United States, but, rather, are introduced into POTWs. 33 U.S.C. § 1317(b)(1).

10. The introduction of pollutants into a POTW is known as an indirect discharge.

11. The term “Indirect Discharge” or “Discharge” is defined as “the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA.” 40 C.F.R. § 403.3(i); see also 33 U.S.C. §§ 1317(b) - (d).

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12. The term “POTW” is defined, in part, as “a treatment works as defined by section 212 of the Act, which is owned by a State or a municipality (as defined by section 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant.” 40 C.F.R. § 403.3(q).

13. Section 212(2)(A) of the CWA, 33 U.S.C. § 1292(2)(A), defines the term “treatment works,” in part, to mean “any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature.”

14. The term “POTW Treatment Plant” is defined as “that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.” 40 C.F.R. § 403.3(r).

15. Section 307 of the CWA directs EPA to promulgate regulations establishing “pretreatment standards” for indirect discharges to POTWs. 33 U.S.C. § 1317(b) and (c).

16. A “pretreatment standard” is defined as “any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to § 403.5.” 40 C.F.R. § 403.3(l).

17. Pursuant to Section 307(b) and (c) of the CWA, 33 U.S.C. § 1317(b) and (c), EPA promulgated the General Pretreatment Regulations for Existing and New Sources of Pollution (the “Pretreatment Regulations”) at 40 C.F.R. Part 403. The Pretreatment Regulations apply to, among other things, “pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into

POTWs as defined below in § 403.3.” 40 C.F.R. § 403.1(b)(1).

18. The term “Industrial User” or “User” is defined as “a source of Indirect Discharge.” 40 C.F.R. § 403.3(j).

19. A “Significant Industrial User” is defined, in part, as an “Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)).” 40 C.F.R. § 403.3(v).

20. All Industrial Users are subject to the general and specific prohibitions of the Pretreatment Regulations found at 40 C.F.R. § 403.5(a) and (b).

21. The specific prohibitions of the Pretreatment Regulations prohibit the discharge of pollutants that will cause corrosive damage to a POTW. Forty C.F.R. § 403.5(b)(2) prohibits pollutants with a hydrogen ion concentration (“pH”) less than 5.0 standard units (S.U.) from being introduced into a POTW, unless the POTW is specifically designed to accommodate such pollutants.

22. Section 307(d) of the CWA prohibits indirect discharges from an Industrial User into a POTW in violation of any pretreatment standard. 33 U.S.C. § 1317(d).

23. Any violation of a pretreatment standard is a violation of the CWA. 33 U.S.C. §§ 1317 and 1319; see also 40 C.F.R. § 403.5.

24. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of

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administrative penalties for violations of Section 307 of the CWA, 33 U.S.C. § 1317.

25. EPA takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g). Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts of this action.

26. EPA has provided the public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b).

II. GENERAL ALLEGATIONS

27. Respondent, a corporation organized under the laws of the State of Washington, is a “person” as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

28. Respondent is the owner and operator of a soy-based food products manufacturing facility located at 153 Industrial Blvd. in the Village of Turner Falls in Montague, Massachusetts (the “Facility”) from which it introduces industrial process wastewaters containing pollutants, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), including, but not limited to, pH, total suspended solids, oil and grease, and biochemical oxygen demand, into a POTW, as defined at 40 C.F.R. § 403.3(q), that is owned and operated by the Town of Montague, Massachusetts (the “Town”), a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

29. On September 22, 2008, EPA re-issued the Town its NPDES permit, permit number MA0100137, which authorizes the discharge of treated wastewaters from the Town’s POTW to the Connecticut River, a “navigable water” of the United States, as that term is defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7).

30. Respondent is a Significant Industrial User under 40 C.F.R. § 403.3(v).

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31. Industrial process wastewaters from Respondent's Facility introduced into the Town's POTW are subject to the Pretreatment Regulations.

32. The Town's POTW was not specifically designed to accommodate industrial wastewater discharges with a pH less than 5.0 S.U. Article IV, Section 4.c of the Town's sewer use regulations prohibits a user from contributing to the Town's POTW "any waters or wastes having a pH less than 6.0 or greater than 11.0 [S.U.] or having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW."

33. On July 18, 2019, EPA inspected the Facility to collect information regarding Respondent's compliance with the Pretreatment Regulations. The EPA inspector was accompanied by an inspector from the Massachusetts Department of Environmental Protection ("MassDEP") and two individuals from the Town's POTW.

34. On September 30, 2019, the Town re-issued Respondent's wastewater discharge permit number MA0100137-002 ("Permit") authorizing the Facility to discharge wastewater into the Town's POTW in accordance with the effluent limitations, monitoring requirements and other conditions of the Permit. The Permit's effluent limitations prohibit discharges from the Facility into the Town's POTW with a pH below 6.0 S.U. or above 11.0 S.U.

35. On October 4, 2019, Complainant sent Respondent a request for information pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), in which EPA requested, among other things, information pertaining to the results of pH monitoring of discharges from the Facility into the Town's POTW.

36. On October 28, 2019, November 13, 2019, December 14, 2019, and January 15, 2020, Respondent provided to EPA responses to the October 4, 2019 request for information in which Respondent provided results of its pH monitoring of discharges from the Facility into the

Town's POTW since September 18, 2019. In these responses, Respondent also described its plans for providing pH adjustment of its wastewater discharges to the Town's POTW. These plans describe a schedule for implementing pH adjustment at the Facility, with an intermediate dosing plan to be implemented by January 2020, and, if necessary, a permanent wastewater treatment system planned to be implemented by October 2020.

37. On January 24, 2020, EPA issued Respondent an Administrative Order for Compliance, EPA Docket No. CWA-AO-R01-FY20-25 ("Administrative Order"), requiring the Facility to achieve compliance on the shortest practicable schedule with the specific prohibition for pH at 40 C.F.R. § 403.5(b)(2) for Facility wastewaters introduced into the Town's POTW. The Administrative Order also required the Facility to submit a report describing the wastewater treatment measures taken to achieve compliance with 40 C.F.R. § 403.5(b)(2), to continue continuous monitoring of wastewaters introduced into the POTW for pH and flow rate, and to continue reporting this information, along with planned changes to the wastewater treatment measures being implemented, to EPA through monthly progress reports.

38. On January 24, 2020, EPA also issued Respondent a request for information seeking additional information about the Facility's production, cleaning, and wastewater treatment operations conducted since January 1, 2015.

39. On February 11, 2020, Respondent provided to EPA a response to the Administrative Order's requirement to describe wastewater treatment measures taken to achieve compliance with 40 C.F.R. § 403.5(b)(2). In the response, Respondent provided the details of its "Temporary Solution" to design a system to dose specific low pH wastewater to neutralize the wastewater before introduction to the POTW.

40. On March 30, 2020, Respondent provided to EPA responses to the January 24, 2020 request for information in which Respondent stated that while production volumes have significantly increased and cleaning processes have also changed at the Facility since 2015, there have been no changes in products, raw materials, or wastewater treatment facilities at the Facility since that time.

41. On April 10, 2020, May 14, 2020, June 15, 2020, July 6, 2020, August 14, 2020, September 15, 2020, October 14, 2020, November 13, 2020, December 14, 2020, January 15, 2021, February 12, 2021, March 15, 2021, April 19, 2021, and May 15, 2021, Respondent provided to EPA monthly progress reports pursuant to the Administrative Order documenting that, during the preceding months, Respondent had introduced wastewaters into the POTW with a pH lower than 5.0 S.U.

42. On January 29, 2021, EPA issued Respondent another request for information seeking, among other information, updates to the Facility's plan to achieve compliance with the specific prohibition for pH at 40 C.F.R § 403.5(b)(2) and actual or estimated costs to implement the Facility's plan.

43. On February 12, 2021, Respondent provided to EPA responses to the January 29, 2021 request for information in which Respondent described minor updates to the Facility's planned wastewater treatment system upgrades, provided an updated schedule for system implementation, with commissioning estimated as March 12, 2021, and provided costs for the temporary wastewater treatment system it implemented in 2020 (approximately \$108,000) and for the permanent wastewater treatment system (approximately \$736,000) it was in the process of implementing.

44. On March 15, 2021, Respondent provided to EPA a monthly progress report pursuant to the Administrative Order in which Respondent stated that it had activated its permanent wastewater treatment system on March 12, 2021, and that the system would be fully operational by March 19, 2021.

45. The pH monitoring results provided by Respondent in responses to EPA's October 4, 2019 request for information and Administrative Order show that the Facility violated the specific prohibition for pH at 40 C.F.R. § 403.5(b)(2) on at least 400 days between September 18, 2019, and August 17, 2021, by frequently introducing wastewaters into the POTW with a pH lower than 5.0 S.U.

III. VIOLATIONS

Count 1: Violations of Specific Prohibition for pH

46. Paragraphs 1 through 45, above, are incorporated by reference as if fully set forth herein.

47. Respondent violated the specific prohibition for pH at 40 C.F.R. § 403.5(b)(2) by indirectly discharging industrial wastewater with a pH of less than 5.0 standard units from the Facility into the Town's POTW on at least 400 days between September 18, 2019 and August 17, 2021.

48. By introducing industrial wastewaters with a pH of less than 5.0 standard units from the Facility into the Town's POTW in violation of 40 C.F.R. § 403.5(b)(2), Respondent violated Section 307(d) of the CWA, 33 U.S.C. § 1317(d), on at least 400 days between September 18, 2019 and August 17, 2021.

IV. TERMS OF SETTLEMENT

49. Respondent certifies that it has taken steps to ensure that it will no longer discharge

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wastewater with a pH of less than 5.0 and will operate the Facility in compliance with the Pretreatment Regulations and Permit.

50. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

51. Respondent neither admits nor denies the specific factual or other non-jurisdictional allegations contained in Section II above.

Waiver of Rights

52. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

53. EPA proposes, and Respondent consents to, the assessment of a civil penalty of **\$252,000** for all violations contained in this CAFO.

Payment Terms

54. In agreeing to the penalty described in paragraph 53 above, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

55. Respondent shall pay a total penalty of **\$252,000** due within 10 days of the date this CAFO becomes final.

56. Respondent shall pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and every payment shall reference “*In the Matter of: Greenleaf Foods, SPC*.”

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Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action “Docket No. CWA-01-2022-0001.” Within 24 hours of payment of the EPA Penalty, proof of payment shall be sent by e-mail and first class or commercial delivery service to Wanda I. Santiago, Regional Hearing Clerk, at U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-6), Boston, MA 02109-3912, and R1_Hearing_Clerk_Filings@epa.gov, and Kevin Pechulis, Senior Enforcement Counsel, U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-3), Boston, MA 02109-3912, and Pechulis.Kevin@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CWA-01-2022-0001”).

57. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Consent Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney’s fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person’s penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty

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shall not be subject to review.

General Provisions

58. The provisions of this CAFO shall apply to and be binding on Respondent, their officers, directors, agents, servants, employees, successors, and assigns.

59. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

60. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein.

61. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

62. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

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63. Except as provided in paragraph 57 above, the Parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

64. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following address: bonnie.barnett@faegredrinker.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

65. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon written agreement of the Parties, and approval of a Regional Administrator or his or her properly authorized delegate.

66. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT, GREENLEAF FOODS, SPC (d/b/a LIGHTLIFE FOODS)

DocuSigned by:
Daniel J. Curtin
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Date: 10/7/2021

Daniel J. Curtin, President and CEO
Greenleaf Foods, SPC

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

James Chow, Deputy Director *for* Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Date: _____

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undersigned unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), and the CROP at 40 C.F.R. § 22.45(c)(4).

~~SO ORDERED THIS DAY OF NOVEMBER 2021:~~



LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

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