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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2014-0058
)	
Idaho Milk Products, Inc.,)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent)	
_____)	

I. STATUTORY AUTHORITY

1.1 This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

1.2 The Administrator has delegated the authority to issue the final order contained in Part V of this CAFO (“Final Order”) to the Regional Administrator of EPA Region 10, who has, in Regional Delegation R10 2-52-A, re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3 Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), 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, EPA issues, and Idaho Milk Products, Inc. (“Respondent”) agrees to issuance of, the Final Order.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order becomes effective.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated, in Regional Delegation R10 2-52-A, the authority to sign consent agreements assessing civil penalties pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

2.3 Part III of this CAFO contains a concise statement of the factual and legal basis for Respondent’s alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the operation of any source in violation of any applicable pretreatment standard established pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b).

3.2 Section 307(b)(1) of the CWA, 33 U.S.C. § 1317(b)(1), requires EPA to establish regulations establishing pretreatment standards to prevent the discharge into publicly owned treatment works of pollutants that are determined not to be susceptible to treatment or that would interfere with the operation of the treatment works. Regulations regarding such pretreatment standards are found at 40 C.F.R. § 403.

3.3 Respondent is a corporation organized under the laws of the State of Idaho with a principal place of business located at 2249 South Tiger Drive, Jerome, Idaho.

3.4 Respondent has, at all times relevant to this CAFO, operated a dairy products processing facility located at 2249 South Tiger Drive, Jerome, Idaho (“Facility”).

3.5 For purposes of this CAFO only, Facility is a “source” and Respondent is an “owner or operator of any source” as those terms are used in Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

3.6 For purposes of this CAFO only, City of Jerome (“City”) municipal wastewater treatment plant is a publicly owned treatment works (“POTW”) as that term is defined in 40 C.F.R. § 403.3(q).

3.7 For purposes of this CAFO only, Respondent discharges process wastewater from the Facility, some of which is ultimately carried to the City POTW, and therefore is an “industrial user” or “user” as defined in 40 C.F.R. § 403.3(j).

3.8 For purposes of this CAFO only, Respondent is subject to the pretreatment requirements set forth in 40 C.F.R. Part 403.

3.9 Section 403.5(b)(2) prohibits certain discharges with pH lower than 5.0 into a POTW.

3.10 On various dates, EPA received information from the City and Respondent showing pH data concerning the Facility’s discharge to the POTW. That information indicated that Respondent discharged wastewater with a pH of lower than 5.0 to the POTW at various times on 138 days between the months of February 2009 and October 2012.

3.11 For purposes of this CAFO only, violations alleged in Paragraph 3.10 constitute 138 violations of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

3.12 Section 309(g)(1) of the CWA, 33 U.S.C § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who has violated, inter alia, Section 307 of the CWA, 33 U.S.C. § 1317. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g) and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4, Respondent is liable for civil penalties not to exceed \$16,000 per day for each violation that occurred between January 12, 2009 and December 6, 2013, up to a maximum amount of \$177,500.

IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3 As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$170,000.00.

4.4 Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty days of the effective date of the Final Order.

4.5 Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title "In the Matter of Idaho Milk Products, Inc." and the docket number "CWA-10-2014-0058" of this action.

4.6 Respondent must deliver photocopies of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Michael Le
U.S. Environmental Protection Agency
Region 10, Mail Stop OWW-130
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7 If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1 Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however that no interest shall be payable on any portion of the assessed penalty that is paid within thirty days of the effective date of the Final Order.

4.7.2 Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees and costs for collection proceedings and a quarterly nonpayment penalty 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 Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.8 The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9 The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10 Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11 Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order.

4.12 The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

APRIL 9, 2014

FOR IDAHO MILK PRODUCTS, INC.:

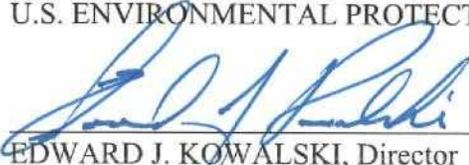


KENT GIDDINGS
General Manager

DATED:

4/17/2014

U.S. ENVIRONMENTAL PROTECTION AGENCY:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1 The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

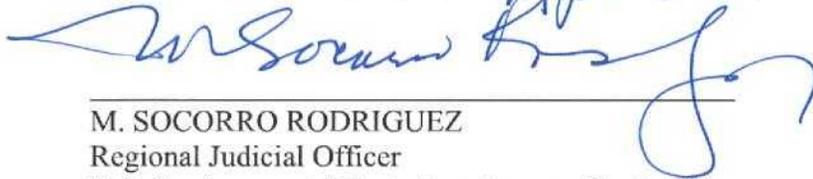
5.2 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3 In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4 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), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5 This Final Order shall become effective upon filing.

SO ORDERED this 22nd day of April, 2014.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of Idaho Milk Products, Inc., Docket No. CWA-10- 2014-0058** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Jennifer Byrne
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

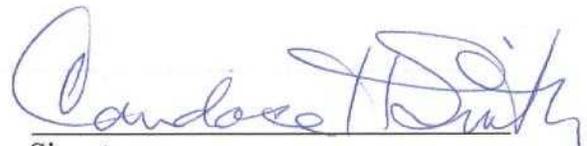
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kent Giddings, General Manager
Idaho Milk Products, Inc.
2249 South Tiger Drive
Jerome, ID 83338

and to

Peter Barton
Givens Pursley LLP
601 W. Bannock St.
P.O. Box 2720
Boise, ID 83701

DATED this 23rd day of April, 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10