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**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

GEM STATE PROCESSING, LLC,  
Heyburn, Idaho,

Respondent.

**DOCKET NO. CWA-10-2016-0037**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**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)(2)(B) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Gem State Processing, LLC ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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

## **III. ALLEGATIONS**

### **Statutory and Regulatory Background**

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, inter alia, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

3.3. A “pollutant,” as defined by the Act, includes, in part, “rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” CWA § 502(6), 33 U.S.C. § 1362(6).

3.4. The definition of “point source” provided in the CWA includes, among others, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.5. Waters of the United States, for purposes of the Act, include all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; the territorial seas; and all impoundments and tributaries of such waters. 40 C.F.R. § 122.2.

3.6. EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions that EPA determines are necessary. CWA § 402, 33 U.S.C. § 1342.

#### **Factual Background**

3.7. At all times relevant to this action, Respondent was a limited liability company organized under the laws of the State of Washington, and therefore a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.8. At all times relevant to this action, Respondent owned a facility (“Facility”), located at 951 U.S. 30 at the Burley-Heyburn Industrial Park in Heyburn, Idaho, where Respondent manufactures dehydrated potato flakes and other dehydrated potato products for human consumption.

3.9. Respondent’s manufacturing of dehydrated potato products places the company within Manufacturing Major Group 20, Food and Kindred Products, and more specifically Standard Industrial Classification (“SIC”) code 2034.

3.10. The Facility is equipped with storm drain pipes that discharge immediately behind and underneath its chillers, which then funnel the drainage through the storm gutter toward the storm drain, located approximately 195 feet from the chillers. The pipe to which this storm drain is connected flows directly into the Snake River, located 1,141 feet from the Facility's storm drain.

3.11. The Snake River is a tributary to the Columbia River and therefore a "navigable water" and "waters of the United States" for purposes of conferring jurisdiction under the CWA. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

#### **Count 1**

3.12. On July 31, 2015, approximately 12,000 to 17,000 gallons of process wastewater overflowed from the Facility's silt basins, which are used to collect the debris and sediment that is removed from the potatoes using wash water. Respondent estimates that between 1,000 to 2,000 gallons of this wastewater discharged into the storm drain, and, ultimately, the Snake River.

3.13. Respondent submitted a letter, via email, to the Idaho Department of Environmental Quality ("IDEQ") on August 07, 2015, documenting the unauthorized discharge of wastewater.

3.14. The wastewater that entered the Facility's storm drain is "industrial waste," and is therefore a pollutant under the Act. 33 U.S.C. § 1362(6).

3.15. The silt basins from which this pollutant was discharged constitute a point source under the Act. 33 U.S.C. § 1362(14).



3.16. On July 31, 2015, Respondent did not hold a valid NPDES permit that would authorize discharge of the wastewater into waters of the United States.

3.17. **Violation:** Respondent violated Section 301(a) of the CWA, as Respondent's July 31, 2015, discharge of pollutants from a point source into waters of the United States was not authorized by a NPDES permit. 33 U.S.C. § 1311(a).

#### **Count 2**

3.18. On August 07, 2015, IDEQ conducted a site investigation and observed two discharge inputs to the Facility's storm drain.

3.19. The first discharge originated from the silt basins. The process silt water from these basins is intended to be collected and recirculated through the Facility for transport to the Burley Industrial Wastewater Treatment Plant, but an inspection of the Facility's storm gutter indicated that a portion of this process wastewater was flowing into the storm drain.

3.20. The second discharge originated from the chillers, whereby chiller condensate was comingling with discarded potato pieces and what appeared to be oil, and traveling through the storm gutter to the Facility's storm drain.

3.21. The process wastewater associated with the August 07, 2015, inspection is industrial waste and therefore a pollutant for purposes of the Act. 33 U.S.C. § 1362(6).

3.22. The silt basins and chillers from which these pollutants were discharged both constitute a point source under the Act. 33 U.S.C. § 1362(14).

3.23. On August 07, 2015, Respondent did not hold a valid NPDES permit that would authorize discharge of the wastewater into waters of the United States.

3.24. **Violation:** Respondent violated Section 301(a) of the CWA, as Respondent's August 07, 2015, discharge of pollutants from two point sources into waters of the United States was not authorized by a NPDES permit. 33 U.S.C. § 1311(a).

#### 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 \$33,000.00.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) 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  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Teresa Luna, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date, the entire unpaid balance of 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 (30) days of the effective date of the Final Order.

4.7.2. Attorneys 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) attorneys 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 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

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

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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



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

DATED:

November 18, 2015

FOR RESPONDENT:

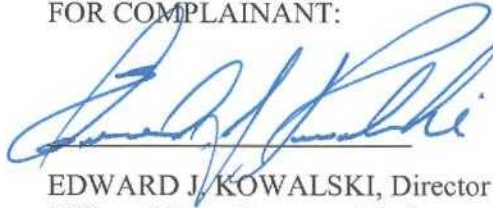


William F. Schow, General Manager  
Gem State Processing, LLC

DATED:

12/3/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

## 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 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 23<sup>rd</sup> day of December, 2015.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

**Certificate of Service**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Gem State Processing, LLC, Docket No.: CWA-10-2016-0037**, 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:

Heather Mapes  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 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:

William F. Schow  
Gem State Processing, LLC  
951 U.S. 30  
Burley-Heyburn Industrial Park  
Heyburn, Idaho 83336

DATED this 23<sup>rd</sup> day of December, 2016



Signature

for:

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10