

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

2018 JUL 17 AM 10:14

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
) Docket No. CWA-07-2018-0174
CHS Inc.)
South Sioux City, Nebraska)
Respondent) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

COMPLAINT

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 (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA”) and Respondent, CHS Inc. (“Respondent” or “CHS”), 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) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent, CHS, has violated Section 307 of the CWA, 33 U.S.C. § 1317, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. CHS Inc. is and was at all relevant times a corporation under the laws of the State of Minnesota and authorized to do business in Nebraska.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 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*, Section 307 of the CWA, 33 U.S.C. § 1317, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 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 a publicly owned treatment works (“POTW”).

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Nebraska pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and the implementing regulations.

9. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Iowa pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and the implementing regulations.

10. The EPA retains concurrent enforcement authority with authorized state NPDES and Pretreatment programs under Section 309 of the CWA, 33 U.S.C. § 1319.

11. Pursuant to the authority of Section 307(b) of the CWA, 33 U.S.C. § 1317(b), the EPA promulgated regulations establishing pretreatment standards for introduction of pollutants into POTWs, including the General Pretreatment Regulations for Existing and New Sources of Pollution at 40 CFR Part 403.

EPA’s General Allegations

12. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. At all times relevant to this action, Respondent was the owner and operator of a soy protein powder production facility (“facility”), located at 395 164th Street, South Sioux City, Nebraska 68776.

14. The City of South Sioux City, Nebraska owns and operates a POTW in Dakota County, Nebraska. South Sioux City’s POTW includes a sewage collection system that receives

wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent's facility.

15. South Sioux City, Nebraska has a multijurisdictional agreement with the City of Sioux City, Iowa to process and treat wastewater from South Sioux City at the POTW owned and operated by Sioux City, Iowa, which discharges to the Missouri River.

16. South Sioux City's POTW and Sioux City, Iowa's POTW are "point sources" that "discharge pollutants" into the Missouri River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12).

17. The Missouri River is a "navigable water" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. Respondent discharges wastewater from its facility into the South Sioux City's POTW, and is therefore an "Indirect Discharger" and an "Industrial User" ("IU") as defined at 40 C.F.R. § 403.3(i) and (j), respectively.

19. Respondent's wastewater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), including, but not limited to, pH.

20. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

21. 40 C.F.R. § 403.5(b)(2) prohibits the introduction into a POTW discharges having a pH lower than 5.0 standard units ("SU"), unless the POTW is specifically designed to accommodate such discharges.

22. 40 C.F.R. § 403.12(g)(5) requires that all sampling and analyses shall be performed in accordance with procedures contained in 40 C.F.R. Part 136.

23. 40 C.F.R. § 403.12(g)(6) provides that if an IU monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in 40 C.F.R. § 403.12(g)(5), the results of this monitoring shall be included in the report to the Control Authority.

24. Chapter 114, Article V, Division 3, Sec. 114-374(9) of South Sioux City's Code of Ordinances prohibits discharges to South Sioux City's collection system of any waters or wastes having a pH lower than 5.5, or having other corrosive properties capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

25. Sioux City, Iowa administers an Approved POTW Pretreatment Program, as defined by 40 C.F.R. § 401.3(d), and is the Control Authority, as defined by 40 C.F.R. § 403.3(f), for IUs that discharge to its POTW, including IUs in South Sioux City, Nebraska covered by the multijurisdictional agreement between the two cities.

26. Respondent was issued a Pretreatment Permit by Sioux City, Iowa, under the authority of Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342, and applicable laws of the States of Iowa and Nebraska, with the effective dates of April 2014 to April 2017. The Pretreatment Permit authorized and regulated wastewater discharges from Respondent's facility that flowed through the South Sioux City POTW to the Sioux City POTW. The Pretreatment Permit set minimum limitations for pH of not lower than 5.0 and required monitoring and reporting Respondent's wastewater for pH no less frequently than once per month. The Pretreatment Permit requires compliance with 40 C.F.R. Part 403.

27. Neither South Sioux City, Nebraska nor the Sioux City, Iowa have authorized discharges by an IU with pH below 5.0 SU.

28. On January 11, 2017, the EPA performed an Industrial User Compliance Evaluation Inspection ("Inspection") of Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondents' compliance with Pretreatment standards and requirements under the CWA and applicable Pretreatment regulations.

29. During the Inspection, the EPA inspectors reviewed and obtained copies of Respondent's documents related to the its wastewater discharge and pretreatment process, including but not limited to the discharge permit issued by Sioux City, sewer billing statements, and hourly pH data for recent months. The EPA inspector also toured the facility, photographed various processes at the facility, and collected information from Sioux City, Iowa, regarding Respondent's discharge.

30. The EPA mailed a copy of the report of the Inspection to Respondent on or about April 9, 2017.

31. By letter dated November 17, 2017, the EPA issued a request for information to Respondent pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), regarding Respondent's wastewater processes and discharges.

32. Respondent replied to the EPA's request for information by letters dated December 8, 2017, December 19, 2017, and January 17, 2018.

EPA's Allegations of Violation

33. The facts stated above are re-alleged and incorporated herein by reference.

34. At all times relevant, Respondent's wastewater was routed from a plant wastewater collection pit to a 30,000-gallon waste water pH balance tank (hereafter, "pH balance tank") and thereafter to the South Sioux City wastewater collection system.

35. A portion of the discharge from the pH balance tank was split from the flow directed to the plant wastewater collection pit and routed past a continuous monitoring automated electrode to measure pH, after which it was then recirculated back to the pH balance tank.

36. Monitoring results from the pH automated electrode, which were recorded and retained, controlled the adjustment of the pH level in the pH balance tank by adding and rapidly mixing acid or base reagents, as appropriate.

37. 40 C.F.R. Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, authorizes the use of an automated electrode to analyze pH.

38. Based on the results of pH monitoring performed by Respondent, during multiple days in September 2016 and October 2016, Respondent discharged wastewater to the South Sioux City collection system with pH levels below 5.0 SU.

39. Respondent's alleged discharges of wastewater with a pH level below 5.0 SU are violations of 40 C.F.R. § 403.5, and as such, are violations of Section 307 of the CWA, 33 U.S.C. § 1317.

40. As alleged above, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent are liable for civil penalties of up to \$20,965 per day for each day during which the violation continues, not to exceed a maximum of \$262,066.

CONSENT AGREEMENT

41. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

42. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

43. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

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

45. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

46. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

47. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent 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/Final Order.

Penalty Payment

48. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Eighty Thousand Dollars (\$80,000)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

49. The payment of penalties must reference docket number "CWA-07-2018-0174" and be remitted using one of the payment methods specified in Appendix A to this Order.

50. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

51. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

52. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

53. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

54. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA.

55. Nothing contained in this Consent Agreement/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.

56. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/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.

57. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

58. The Parties acknowledge that this Consent Agreement/Final Order is subject to the 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.

59. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

60. The State of Nebraska has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

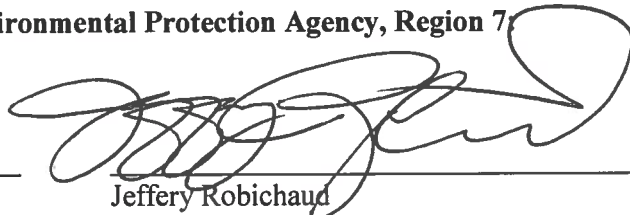
61. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

62. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

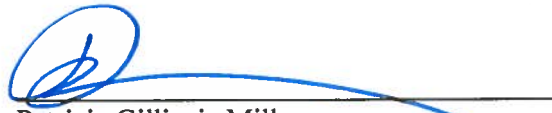
For the Complainant, United States Environmental Protection Agency, Region 7

7/16/18

Date



Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

July 17, 2018
Date

Karina Borrero
Regional Judicial Officer
KARINA BORRERO

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by First Class Mail to Respondent:

Eric Larson
Principal Legal Counsel
CHS Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077

Copy emailed to Attorney for Respondent:

Kodi Jean Verhalen
Briggs and Morgan, P.A.
KVerhalen@Briggs.com

Copy emailed to Attorney for Complainant:

Patricia Gillispie Miller
U.S. Environmental Protection Agency, Region 7
miller.patriciag@epa.gov

Copy by First Class Mail to the Nebraska Department of Environmental Quality:

Mr. Steven Goans, Deputy Director
Water Management Division
Wastewater Section / Water Management Division
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

July 17, 2018
Date

Lisa Haugen
Lisa Haugen
Hearing Clerk, Region 7

**APPENDIX A
PENALTY PAYMENT INFORMATION**

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter "SFO 1.1" in the search field

Open form and complete required fields.