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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0300
New Heaven Chemicals Iowa, LLC,)	
Manley, Iowa)	
)	COMPLAINT AND
Respondent)	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 U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, New Heaven Chemicals Iowa, LLC (“Respondent”), 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, New Heaven Chemicals Iowa, LLC, has violated Section 402 of the CWA, 33 U.S.C. § 1342, 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. New Heaven Chemicals Iowa, LLC, is and was at all relevant times a corporation under the laws of the State of Iowa and authorized to do business in Iowa.

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*, 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.

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 Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and the implementing regulations.

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

EPA’s General Allegations

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

11. At all times relevant to this action, Respondent owned and operated a chemical manufacturing facility (“Facility”) located at 1585 380th Street, Manly, Iowa 50456.

12. Respondent’s Facility discharges wastewater to Beaver Creek, a tributary to Shell Rock River, which in turn discharges to Cedar River.

13. Beaver Creek, Shell Rock River and Cedar River are “navigable waters” of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

14. Respondent’s wastewater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. Respondent’s Facility is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

16. On or about February 15, 2016, the IDNR granted NPDES permit number IA0052535 (hereafter “Permit”) to the Respondent for discharges from the Facility to Beaver

Creek subject to compliance with conditions and limitations set forth in the Permit. The IDNR amended the Permit on May 12, 2016, and again on August 1, 2017. The Permit will expire on February 14, 2021.

17. On March 19 through 22, 2018, the EPA performed a Compliance Sampling Inspection (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to determine the Facility’s compliance with the Permit.

18. During the Inspection, the EPA inspector interviewed New Heaven Chemicals Iowa, LLC personnel, reviewed and obtained copies of documents, including Monthly Operating Reports (“MORs”) from September 2016 through February 2018, Noncompliance Notifications submitted to the IDNR, and sampling and analysis records. The EPA inspector sampled effluent from Facility for three consecutive days.

19. At the conclusion of the Inspection, the EPA inspector issued a Notice of Potential Violation (“NOPV”) to Respondent identifying potential deficiencies and violations of the Permit noted by the inspector.

20. By written communications dated March 28 and April 2, 2018, Respondent submitted responses to the EPA’s NOPV, including information of actions Respondent had taken to correct deficiencies and violations identified in the NOPV.

21. The EPA mailed a copy of the report of the Inspection to Respondent and the IDNR on or about May 21, 2018.

EPA’s Allegations of Violation

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

23. Based on review of information and documentation obtained during the Inspection and other relevant information, the EPA alleges that Respondent violated the conditions and limitations of its Permit, including but not limited to the following:

- a. Outfall 001 Effluent Limitations: Respondent violated the monthly average and daily maximum effluent concentration limitations set forth in the Permit for discharges from Outfall 001 for five-day Biochemical Oxygen Demand (“BOD₅”) and Total Suspended Solids (“TSS”):

Month	BOD ₅		TSS	
	Mo. Avg.	Daily Max.	Mo. Avg.	Daily Max.
Feb-2017	25 mg/l	38 mg/l	30 mg/l	45 mg/l
Mar-2017	34		86	86
Apr-2017	338	338		
May-2017	74	74	35	
Jun-2017	177	177		
Aug-2017	37.1			
Sep-2017	33.1			
Oct-2017	41.6	41.6		
Nov-2017	325	325		
Feb-2018			35.3	

- b. Outfall 002 Effluent Limitations: Respondent violated the monthly average and/or daily maximum effluent mass limitations set forth in the Permit for discharges from Outfall 002 for BOD₅:

Month	BOD ₅	
	Mo. Avg	Dmax
Sep-2016	0.99 lbs/d	2.63 lbs/d
Oct-2016	14.61	14.61
Nov-2016	99.7	99.7
Nov-2016	19.3	19.3

- c. Outfall 003 Effluent Limitations: Respondent violated the monthly average, daily maximum and/or 30-day average effluent concentration and mass limitations set forth in the Permit for discharges from Outfall 003 for Chemical Oxygen Demand (“COD”), Iron (“Fe”), Polynuclear Aromatic Hydrocarbons (“PAH”) and Total Residual Chlorine (TRC):

Month	COD				Fe		PAH	TRC
	Mo. Avg	Dmax	Mo. Avg	Dmax	Mo. Avg	Dmax	30d Avg	Dmax
Month	47 mg/l	47 mg/l	31 lbs/d	31 lbs/d	1.014 mg/l	1.014 mg/l	0.03473 ug/l	0.332 ug/l
Sep-2016	25800	25800	135.56	135.56				
Oct-2016	15500	15500	158.36	158.36				0.52
Nov-2016	13300	13300	115.36	115.36				2.2
Feb-2017	90.2	90.2						
Apr-2017	5400	5400	36.48	36.48				0.41
May-2017	270	270						
Jun-2017	379	379						
Jul-2017	51.9	51.9						
Aug-2017	98.27	109			1.13	1.13		
Sep-2017	90.75	98.4			5.74	5.74		
Oct-2017	76.93	167			1.17	1.17		
Nov-2017	279.45	500			2.08	2.08		
Dec-2017	68.9	100						
Jan-2018					1.47	1.47	0.793	
Feb-2018	75.05	90.9			1.88	1.88		

- d. Outfall 003 Whole Effluent Toxicity Testing: Respondent failed to comply with the Permit requirement to sample Outfall 003 for quarterly Whole Effluent Toxicity in the fourth quarter of 2017;
- e. Signatory Requirements: Respondent failed to have a responsible corporate officer, as defined by 567 IAC 64.3(8), sign and certify Monthly Operating Reports submitted to IDNR from approximately September 2016 to the date of the Inspection, as required by Paragraph 12 of the Standard Conditions of the Permit; and
- f. Unreported Bypasses: Respondent failed to report bypasses of its wastewater treatment system in August 2017 and January 2018, as required by Paragraph 23(d) of the Standard Conditions of the Permit.

24. Respondent's alleged violation of the terms and conditions of NPDES Permit No. IA0052535 are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

25. 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 is liable for civil penalties of up to \$21,393 per day for each day during which the violation continues, not to exceed a maximum of \$267,415.

CONSENT AGREEMENT

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

27. 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.

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

34. 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.

29. 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.

30. 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.

31. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent is in current compliance with Administrative Order on Consent, EPA Docket No. CWA-07-2019-0035, to bring Respondent's facility into compliance with NPDES Permit No. IA0052535, Section 402 of the CWA, 33 U.S.C. § 1342, and applicable regulations.

32. 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

33. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a **mitigated** civil penalty of **Seven Thousand Three Hundred Eighty-Five Dollars (\$7,385)** 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 thirty (30) days after the effective date of this Consent Agreement/Final Order as set forth below.

34. The payment of penalties must reference docket number "CWA-07-2018-0300" and be remitted using one of the payment methods specified in Appendix A to this Order.

35. 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

36. 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.

37. 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

38. 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.

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

40. 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.

41. 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.

42. 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

43. 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.

44. 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 - Region 7, 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.

45. The State of Iowa 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).

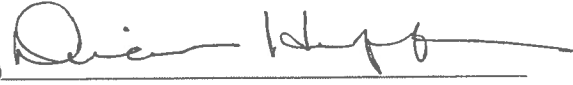
46. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

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

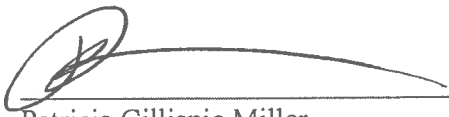
For the Complainant, United States Environmental Protection Agency - Region 7:

03/25/19

Date

for 

Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Office of Regional Counsel

For the Respondent, New Heaven Chemicals Iowa, LLC:



Signature

12/26/2018

Date

RAMESH HARIDAS

Name

CEO

Title

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.

March 26, 2019
Date

Karina Borromeo
Regional Judicial Officer

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:

Paul Katzenberger
Plant Manager
New Heaven Chemicals Iowa, LLC
1585 380th Street
Manly, Iowa 50456

Copy emailed to Attorney for Respondent:

Charles F. Becker
Belin McCormick
cfbecker@belinmccormick.com

Copy emailed to Attorney for Complainant:

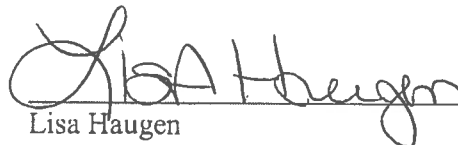
Patricia Gillispie Miller
U.S. Environmental Protection Agency - Region 7
miller.patriciag@epa.gov

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

Jeff Vansteenburgh, Supervisor
IDNR Field Office No. 2
2300 15th St. SW
Mason City, Iowa 50401

Ted Petersen, Supervisor
IDNR Field Office No. 5
7900 Hickman Rd., Suite 200
Windsor Heights, IA 50324-4404

March 26, 2019
Date



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.