

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Bemis Clysar, Inc.)
)
Respondent)
)
Docket No. CWA-07-2011-0092
)
Proceedings under Section 308(a))
)
and 309(a)(3) of the Clean Water Act,)
)
33 U.S.C. §§ 1318 (a) and 1319(a)(3))
)
_____)

I. Statutory Authority

1. These FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Sections 308(a) and 309(a)(3) of the Clean Water Act (CWA or the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a)(3), as delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

3. The Iowa Department of Natural Resources (IDNR) is the agency within the State of Iowa that has been authorized to administer the federal NPDES program pursuant to Section 402 of the CWA and its implementing regulations. EPA authorized Iowa to administer the NPDES program on August 10, 1978. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

II. General Allegations

4. Bemis Clysar, Inc. (hereafter "Respondent" or "Bemis") owns and operates a facility in Camanche, Clinton County, Iowa which produces flexible packaging materials ("the facility"). The facility employs approximately 255 people and operates 24 hours a day, seven days a week.

5. Bemis owns and operates a WWTP at the facility that receives and treats domestic and industrial wastewaters generated at the facility. The facility's WWTP discharges to an ash pond/wetland and to the Mississippi River.

6. Bemis is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

7. Bemis’ WWTP is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Bemis’ discharge of pollutants from its WWTP requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

9. On December 8, 2008, IDNR issued to Bemis NPDES Permit No. IA0001066 (hereafter “2008 NPDES permit”) for discharges from its WWTP. The 2008 NPDES permit expires on December 7, 2013. The 2008 NPDES permit describes and authorizes discharges from six (6) enumerated outfalls (Outfalls 001-006) in conformance with the terms and conditions of the permit. Outfalls 001, 002, 003, and 005 each discharge to the Mississippi River. Outfalls 004 and 006 discharge to an ash pond/wetlands.

10. The 2008 NPDES permit establishes effluent limitations for each outfall, including five-day biochemical oxygen demand (BOD₅), five-day carbonaceous biochemical oxygen demand (CBOD₅), total suspended solids (TSS), PH, total residual chlorine (TRC), total dissolved solids (TDS), and oil and grease. The 2008 NPDES permit (Monitoring and Reporting Requirements) also requires daily flow monitoring for each outfall. BOD₅ limitations apply to Outfalls 004 and 005; CBOD₅ limitations apply to Outfall 006.

11. The 2008 NPDES permit requires Respondent to file Monthly Operating Reports (MORs) with the IDNR (on a monthly basis) that record and report the sampling, measurement and analysis results for all pollutants regulated by the NPDES permit.

12. On February 2, 2010, IDNR conducted a routine inspection of the facility, including a review of the MORs. IDNR’s inspection documented the violation of numerous permit limits (CBOD₅, TRC, and TSS) from Outfall 006 during 2009.

13. On July 14, 2010, IDNR entered into an Administrative Consent Order with Respondent which required payment of \$9,000 in penalties for significant non-compliance with the facility’s 2008 NPDES permit, including CBOD₅, TRC and TSS.

14. The 2010 IDNR Order required Respondent to submit a plan to IDNR by August 1, 2010, for improvements to the WWTP that would eliminate violations of the 2008 NPDES permit from Outfall 006, with an implementation schedule for the required improvements. This plan was submitted by Respondent to IDNR on July 29, 2010 (“2010 Facility Plan”). The 2010 Facility Plan outlined upgrades to the facility’s WWTP that focused on proposed improvements to correct TSS violations from only Outfall 006 by installation of upgraded pumps in the WWTF’s lift station and replacement of a clarifier scum removal system.

15. On November 9, 2010, IDNR issued Respondent a construction permit for the upgrades to the lift station and clarifier, with the requirement that construction be initiated within one year from that date. These improvements were reportedly completed in approximately May 2011.

16. Between November 15-18, 2010, EPA performed an inspection of Bemis' wastewater treatment facilities under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (2010 Inspection). At the conclusion of the 2010 Inspection, Respondent was issued a notice of potential violation (NOPV) regarding violations observed and documented by EPA during the inspection. The violations cited in EPA's NOPV included unpermitted discharges, violations of the 2008 NPDES permit from Outfalls 004 and 006 (including violations of TSS, CBOD₅, TDS), failure to conduct flow monitoring and improper sampling of results.

17. Following the 2010 Inspection, during the period between December 2010 and April 2011, Respondent's MORs have documented additional violations of the 2008 NPDES permit from Outfall 006 (including violations of TSS, CBOD₅, TDS) and the failure to properly conduct and/or report flow monitoring.

III. Findings of Violations

Unpermitted discharges

18. The 2008 NPDES Permit describes and authorizes discharges from six specified outfalls.

19. EPA's inspection and NOPV documented discharges to the ash pond/wetland from two additional unpermitted locations. First, three hand/chemical wash sinks and cooling water from two air conditioners discharged to the ash pond/wetland. Second, EPA's inspection and NOPV documented the unpermitted discharge from a septic tank to the Mississippi River.

20. All discharges from the unpermitted outfalls are not authorized by the 2008 NPDES permit, and accordingly, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations of the CWA.

Violations of 2008 NPDES permit

21. Part A of the Respondent's 2008 NPDES permit sets forth numeric limits for discharges from the WWTP from Outfalls 001-006 (including but not limited to, BOD₅, CBOD₅, TSS, TRC, and TDS).

22. The MORs submitted by Respondent to IDNR document that, between 2009 and May 2011, Respondent repeatedly discharged pollutants from Outfalls 001-006 in excess of the final effluent limitations of its 2008 NPDES permit (including but not limited to BOD₅, CBOD₅, TSS, TRC, and TDS) (The number and frequency of these violations are summarized in Table 1, below).

23. The MORs submitted by Respondent to IDNR document that, between 2009 and May 2011, Respondent repeatedly failed to properly record and/or report the 24 hour flows discharged from Outfalls 001, 002, 003, 005 and 006, as required by Respondent's 2008 NPDES permit (The number and frequency of these violations are summarized in Table 1, below.)

Table 1:
Summary of Number of Violations of Respondent's 2008 NPDES permit
Between January 2009 and April 2011

Outfall	Flow	BOD ₅ /CBOD ₅		TSS		Cl	
	Days	Concentration	Mass	Concentration	Mass	Concentration	Mass
001	152					50	70
002	485					44	67
003	16					1	15
004			16	4	1		3
005	6	4	16	4	15	3	14
006*	25	4	3	16	5	3	7
Totals	684	8	35	24	21	101	176

Outfall	pH	O&G		TDS		Totals
		Concentration	Mass	Concentration	Mass	
001						272
002						596
003						32
004	1		1			26
005	3	5	13			83
006*	1			16	2	82
Totals	5	5	14	16	2	1091

*Violations identified in this table for Outfall 006 occurred after IDNR's July 2010 Order.

24. The Respondent's violations of the effluent limits and flow monitoring requirements described above are each violations of the Respondent's 2008 NPDES permit, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations of the CWA.

IV. Order for Compliance

25. Based on the foregoing FINDINGS OF VIOLATIONS and pursuant to the authority of Sections 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

26. Within 30 days of the Effective Date of This Order, Respondent shall submit information to EPA, with a copy to IDNR, as follows:

- a. A written and detailed explanation of all actions taken and/or planned actions to upgrade the WWTP, including proposed completion dates for each future action to be taken, to correct the violations cited herein, no later than November 30, 2011;
- b. A statement whether flow monitoring equipment has been installed and flow measurements required by the 2008 NPDES permit are being correctly collected and reported. If not, provide a schedule for installing and a plan for properly maintaining and operating appropriate flow measurement systems for Outfalls 001, 002, 003, and 005 not later than 60 days from the Effective Date of this Order;
- c. A proposed schedule for implementing all remaining corrective measures identified in the 2010 Facility Plan and authorized by the 2010 Construction Permit, no later than November 30, 2011; and
- d. A statement certifying that all unpermitted discharges from the Facility have been eliminated. If such unpermitted discharges have not been eliminated, Respondent shall provide a schedule for eliminating all unpermitted discharges from the facility not later than 60 days from the Effective Date of this Order.

Reports

27. For two years from the effective date of this Order, Respondent shall submit to EPA the following information on a quarterly basis, no later than the 28th day of the month following the end of the calendar quarter (e.g., October 28, January 28, April 28 and July 28):

- a. Copies of all MORs and all monitoring data conducted pursuant to this Order.
- b. A description of the status of all actions or planned actions identified in the information required by paragraph 27 of this Order until all such actions have been completed;

- c. If the MORs document any violation of TDS limits at Outfall 006, the Quarterly Report shall specify a plan to identify and remove from the waste stream, if feasible, the source of total dissolved solids causing violations of limits for TDS;
- d. If the MORs document any violation of TSS limits at Outfall 004, the Quarterly Report shall include a plan for ensuring concentration of total suspended solids discharged is within permitted limits for Outfall 004; and
- e. The status of actions taken to identify and correct, or remove from the waste stream, the source of total dissolved solids until all such actions have been completed at which time a certification of completion shall be submitted.

28. Certification of completion of each action shall be independently submitted within 30 days of its completion.

29. With each submittal to EPA pursuant to the requirements of this Order, Respondent shall include a written statement signed by a principal executive officer, or by a duly authorized representative of that person, that contains the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

30. All documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Wayne Dillard, P.E.
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

31. A copy of all documents required by this Order to be submitted to EPA shall be submitted by mail to:

Dennis Ostwinkle, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

and

Jim Sievers, Environmental Specialist
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

V. General Provisions

Effect of Compliance with the terms of this Order for Compliance

32. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

33. At EPA's sole discretion, extensions of the compliance deadlines for this Order may be made by EPA by written notice to Respondent without further formal amendment to the Order.

34. This Order does not constitute a waiver or a modification of any requirements of the CWA 33 U.S.C. § 1251, et seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1318 and /or any other authority.

Access and Requests for Information

35. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and /or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

Severability

36. If any provisions or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

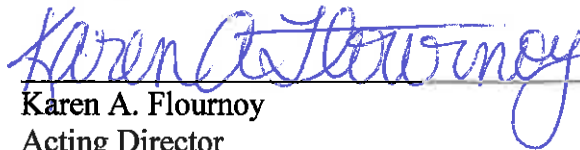
Effective Date

37. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

38. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 8th day of August, 2011.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division



Howard Bunch
Senior Assistant Regional Counsel
Office of Regional Counsel

In the matter of:
Bemis Clysar, Inc.
Findings of Violation and Order for Compliance
EPA Docket No.: CWA-07-2011-0092

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original of this Findings of Violation and Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Bemis Clysar, Inc.
Attention: Jack E. Friend, Technical Support Manager
Highway 67 South
Clinton, Iowa 52732.

I also further certify that on the date noted below I sent by first class mail, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Dennis Ostwinkle
Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

Jim Sievers
Environmental Specialist
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623.

AUG 08 2011

Date