

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2019-0035
New Heaven Chemicals Iowa, LLC,)	
Manley, Iowa)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a))	
of the Clean Water Act,)	
33 U.S.C. § 1319(a))	
_____)	

Preliminary Statement

1. This Administrative Order for Compliance on Consent ("Order") is issued by the U.S. Environmental Protection Agency ("EPA") pursuant to the authority vested in the Administrator of the EPA by Section 309(a)(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent, New Heaven Chemicals Iowa, LLC ("Respondent"), is and was at all relevant times a corporation under the laws of the State of Iowa and authorized to do business in Iowa.

3. The EPA, together with the Respondent (hereafter collectively referred to as the "Parties") enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be

bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order.

Statutory and Regulatory Framework

7. 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.

8. 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.

9. 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.

10. 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

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

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

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

14. 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).

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

22. 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.

23. 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

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

25. 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.
	25 mg/l	38 mg/l	30 mg/l	45 mg/l
Feb-2017			86	86
Mar-2017	34			
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
	0.99 lbs/d	2.63 lbs/d
Sep-2016	14.61	14.61
Oct-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
	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.

26. 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.

Reasonable Time to Achieve Compliance

27. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that one hundred twenty (120) days is a reasonable time for Respondent to comply with the terms and conditions of its NPDES Permit, IA0052535.

Order for Compliance on Consent

28. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

29. In accordance with this Order, the Respondent shall take all necessary actions to comply with the applicable limitations and conditions of Permit, NPDES Permit No. IA0052535, including but not limited to the effluent limitation for iron.

30. By no later than May 1, 2019, the Respondent shall submit a written report that:

- a. Describes the specific actions taken, equipment installed, and/or operational changes made to achieve compliance with the Permit;
- b. Provides a copy of discharge monitoring reports for the facility from December 2018 through March 2019; and
- c. Identifies any additional actions Respondent believes will be necessary to achieve or maintain compliance, including a schedule for implementing such actions.

31. The EPA may, after review of the report and description of actions taken submitted by Respondent pursuant to Paragraph 30, provide written comments and suggestions regarding such submittals. Review and comment on Respondent's submissions by the EPA does not relieve Respondents of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

32. If Respondent reasonably believes it is not technically able to complete all actions necessary to comply with the requirements of Paragraph 29 by the "reporting deadline" in Paragraph 30, Respondent may submit a written request to the EPA by no later than fifteen (15) days prior to the reporting deadline for an extension of time to achieve compliance. The request must include a description of the specific action(s) for which the extension is being sought, an explanation of the reason for the delay, and a date certain by which the action(s) will be completed.

33. Any decision by EPA regarding a request for an extension of time pursuant to Paragraph 32, above, will be made in writing and, if granted, will set forth the new compliance date for the action(s) in question. The decision by EPA regarding the extension shall not be subject to appeal; however, EPA will not unreasonably withhold approval.

34. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

Reports/Submissions

35. *Reporting.* In addition to the report required by Paragraph 30, above, Respondent shall submit a report no later than November 1, 2019, describing any additional the actions it has taken since May 1, 2019, to ensure continued compliance with the terms of its Permit and this Order. The report shall include, at a minimum:

- a. Describe any additional actions taken, equipment installed, and/or operational changes made to achieve compliance with the Permit;
- b. Provides a copy of discharge monitoring reports for the facility from April through September 2019; and
- c. Identify any additional actions Respondent believes will be necessary to achieve or maintain compliance, including a schedule for implementing such actions.

36. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 39, below, shall be submitted by electronic mail to:

marshall.paul@cpa.gov

Paul Marshall
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

37. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

38. All documents required to be submitted pursuant to this Order shall also be submitted by mail to IDNR to the address provided below:

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

39. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

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.

General Provisions

Effect of Compliance with the Terms of this Order

40. Compliance with the terms of this Order shall not relieve the Respondent of liability for, or preclude the 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.

41. 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. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

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

Severability

43. If any provision or authority of this Order, or the application of this Order to the Respondent, is held by federal judicial authority to be invalid, the application to the 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

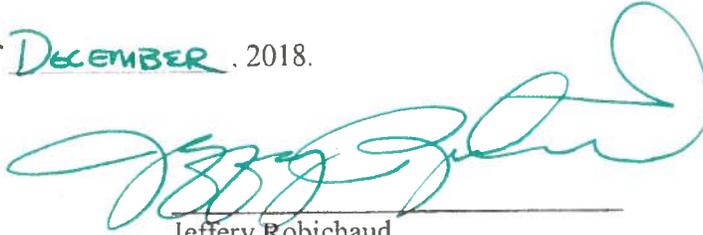
44. This Order shall be effective upon receipt by the Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

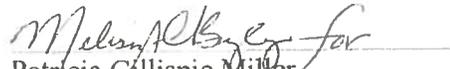
45. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

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

Issued this 27TH day of DECEMBER, 2018.

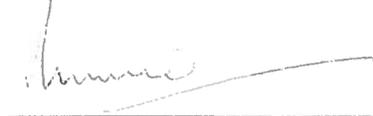


Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the Respondent, New Heaven Chemicals Iowa, LLC:



12/26/2018

Signature

Date

RAMONA HARIDASS

Name

CEO

Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent to the following:

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

12/27/2008
Date


Signature