



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG - 5 2019

REPLY TO THE ATTENTION OF

ECW-15J

CERTIFIED MAIL 7009 1680 0000 7646 1108  
RETURN RECEIPT REQUESTED

Brewster Cheese Company  
Attn: Tom Murphy, President  
800 Wabash Avenue South  
Brewster, Ohio 44613

Re: Docket No: CWA-05-2019-0005

Dear Mr. Murphy:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed *August 5, 2019* with the Regional Hearing Clerk. The penalty amount agreed upon is \$56,000, which is due 30 days after the effective date of this CAFO. A Certified or Cashier Check should be made payable to the "Treasurer, United States of America," at the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

When submitting your check, **please be sure that the Case Docket No. is included at the bottom of your check.** Additional payment options are available at <http://www.epa.gov/financial/makepayment>.

As indicated in your CAFO, a copy of the check or electronic transfer must be sent to:

LaDawn Whitehead  
Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Joan Rogers  
Water Enforcement & Compliance Assurance Branch (WC-15J)  
Water Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

John Steketee  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

If you have any questions, please contact Joan Rogers, of my staff at (312) 886-2785 or by email at rogers.joan@epa.gov or your attorney may contact John Steketee, Associate Regional Counsel, at (312) 886-0558 or by email at Steketee.john@epa.gov.

Sincerely,



Acting for  
Patrick F. Kuefler  
Chief

Water Enforcement and Compliance Assurance Branch

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b> CWA-05-2019-0005
	)	
<b>Brewster Cheese Company, 300 West Railroad Avenue, Stockton, Illinois 61085,</b>	)	<b>Proceeding to Assess a Class II Civil Penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)</b>
	)	
<b>Respondent.</b>	)	
	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Brewster Cheese Company, Stockton, Illinois, a branch location of Brewster Cheese Corporation, Brewster, Ohio, a corporation organized under the laws of the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). See 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent 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 CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); its right to appellate review under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

**Statutory and Regulatory Background**

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States by any person, except in compliance with, *inter alia*, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. Section 402 provides that pollutants may be discharged into navigable waters of the United States only in accordance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and a state, upon receiving authorization from EPA, may permit discharges

into navigable waters, subject to specific conditions. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit, and a violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to navigable waters. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit, and a violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

12. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations control the introduction of pollutants by industrial users into Publicly Owned Treatment Works (POTW) which may pass through or interfere with treatment processes of such treatment works, or which may contaminate sewage sludge.

13. In Illinois, the Illinois Environmental Protection Agency (Illinois EPA) is authorized by EPA Region 5 to administer the National Pollutant Discharge Elimination System (NPDES) program. However, Illinois does not have an approved State pretreatment program and Illinois EPA is not authorized to oversee the pretreatment program portion of the NPDES program in Illinois. EPA Region 5 has primary responsibility for administering the pretreatment program in Illinois. Therefore, EPA Region 5 is the Approval Authority for the pretreatment program in Illinois and the Control Authority in municipalities where the POTW does not have an EPA-approved pretreatment program.

14. The General Pretreatment Regulations at 40 C.F.R. § 403.3(k) and (p) set forth definitions for interference and pass through, respectively. Specifically:

a. "Interference" is defined, in pertinent part, as a discharge of pollutants, which alone or in conjunction with other sources, inhibits or disrupts the treatment processes or operations of a POTW, and which therefore is a cause of a violation of any requirement of a POTW's NPDES permit; and

b. "Pass through" is defined, in pertinent part, as a discharge of pollutants which exits a POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with other sources, is a cause of a violation of any requirement of a POTW's NPDES permit.

15. 40 C.F.R. § 403.5(a) sets forth general prohibitions that users shall not introduce pollutants into a POTW which result in the "pass through" of pollutants through the POTW, or "interference" with the operations of the POTW.

16. Section 502(12) of the CWA defines "discharge of a pollutant" as, *inter alia*, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

17. Section 502(6) of the CWA defines "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

18. Section 502(14) of the CWA defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

19. Section 502(7) of the CWA defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

20. The regulation at 40 C.F.R. § 122.2 (1993) defines the term "waters of the United States," as

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

21. Section 502(5) of the CWA defines a "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5).

22. A "Significant Industrial User" is defined by 40 C.F.R. § 403.3(v)(ii) as a contributing industry that has (1) a flow of 25,000 gallons or more per average workday, or (2) has an average daily flow or load greater than five percent (5%) of the flow or load carried by the POTW or (3) has significant impact on the POTW or the quality of the POTW's effluent.

23. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires NPDES permits for stormwater discharges "associated with industrial activity."

24. EPA regulations define the term "stormwater discharge associated with industrial activity" as "the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." See 40 C.F.R. § 122.26(b)(14). Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

25. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which includes discharges not in compliance with a permit under Section 402 of the CWA, 33 U.S.C. § 1342. EPA may conduct such enforcement consistent with the January 1989 Memorandum Between the Department of the Army and The Environmental Protection Agency, Federal Enforcement for the Section 404 Program of the Clean Water Act.

#### General Allegations

26. Respondent is a corporation, therefore, is a "person" as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

27. At all times relevant to this CAFO, Respondent owned and operated the Brewster Cheese Swiss cheese manufacturing facility, located at 300 West Railroad Avenue in Stockton, Illinois ("Facility").



28. The Village of Stockton Illinois is a municipality that operates a POTW for the treatment of domestic and industrial wastewater, therefore, is a "person" as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

29. The Mud Run Creek is considered a "navigable water" of the United States, as defined by Section 502(7) of the CWA 33 U.S.C. § 1362(7).

#### Specific Allegations

30. Respondent discharges process wastewater from its Facility into the Village of Stockton's POTW, and therefore is an "industrial user," as defined by 40 C.F.R. § 403.3(j). Respondent's discharges to the POTW constitute an estimated 90-95% of total loadings of Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), and ammonia treated by the POTW.

31. Respondent is a Significant Industrial User based on discharges to the Village of Stockton's POTW in excess of 25,000 gallons of wastewater per day, discharging greater than 5% of loadings, and potential to impact the POTW.

32. On May 19, 2010, Illinois EPA issued an Illinois Environmental Protection Agency Water Pollution Control Permit to Respondent. This permit expired on April 30, 2015.

33. On November 10, 2015, reissued an Illinois Environmental Protection Agency Water Pollution Control Permit to Respondent. This permit does not contain any effluent limitations but stated that Respondent is permitted to operate water pollution control facilities to "pretreat 0.2 MGD 0.3 MGD maximum of cheese processing wastewater tributary to the Stockton POTW."

34. The Village of Stockton has placed the following limits on the effluent discharge from respondent's facility to the Village of Stockton's POTW for surcharging purposes: BOD

(100 milligrams per liter [mg/L], TSS (100 mg/L), Total Keidjal Nitrogen (22 mg/L) and flow (300,000 gpd).

35. As an industrial discharger to the Village of Stockton's POTW, Respondent is also subject to the City's municipal ordinance which requires Respondent to pay surcharges for discharges to the POTW above specified limits, based on monitoring performed by the City.

36. An Illinois EPA inspector conducted an inspection at the Village of Stockton's POTW on December 8, 2014 and then issued a "Pass Through Interference Report" notifying the Village of Stockton's POTW of significant non-compliance exceedances of the parameters of POTW's NPDES Permit.

37. On February 9, 2015, Illinois EPA issued a Violation Notice (VN) to Respondent and in a letter dated March 16, 2015, Respondent answered the VN describing the steps taken to address the Pass Through and/or Interference.

38. The violations were due to a November 12, 2014 release of large amounts of a sanitizing biocide agent, "Vortex," from Respondent's facility to the Village of Stockton's POTW.

39. Respondent reported releasing large amount of an acid-based sanitizing agent named "Vortex" to the sanitary line connecting to the Village of Stockton's POTW. The acid killed the biological treatment units at the Stockton Cheese WWTP and in the Village of Stockton's POTW. As the microorganisms in the Village of Stockton's POTW were being killed, a noticeable odor was detected by the POTW operator and Village residents. Eventually, the loss of the microorganisms in the Village of Stockton's POTW caused Stockton to violate its NPDES permit because it was not able to biologically treat its influent. The problem with the effluent exceedances at the Village of Stockton's POTW were reported to Illinois EPA on

December 4, 2014. The plant had to be reseeded with microorganisms and operations at the POTW were not expected to be at full capacity for several weeks after the incident.

40. Respondent discontinued use of Vortex sanitizer in the automated portion of the Clean-In-Place system. They also established formal monthly communications with the Village of Stockton, starting in March 2015. Additional flow and loading issues identified by the Illinois EPA inspector were also addressed.

41. EPA acquired the Discharge Monitoring Reports (DMR) from the Village of Stockton which showed effluent exceedances for the months of October, November, and December 2014. Each of the DMRs from those months listed the cause of the exceedances as being due to loading from Respondent's Facility. The November 2014 DMR additionally stated "Most codes are over due to biocide used at Stockton cheese plant that killed the life in the wastewater treatment plant. It is now coming back to life". The December 2014 DMR stated "parameters out of whack due to Stockton cheese dumping a biocide on the plant. Have since recovered remarkable well."

42. There were no exceedances at the Village of Stockton in January, February or March 2015.

43. On December 7, 2015, EPA inspected Respondent's Facility to determine Respondent's compliance with the CWA.

44. On May 9, 2018, EPA electronically transmitted the inspection report which documented the CWA violations at Respondent's facility.

**Count 1**

**Violations of the Prohibition against Interference and Pass Through October 2014**

45. The facts stated in Paragraphs 1 through 44, above, are incorporated herein by reference.

46. Under 40 C.F.R Part 403 and Respondent's NPDES permit, Respondent is prohibited from the discharge of pollutants which cause or contribute to interference or process upset at the Village of Stockton's POTW, or that cause or contribute to the pass through of pollutants in violation of the Village of Stockton's NPDES permit.

47. As described in paragraphs 38-41, the Village of Stockton violated the limits of its NPDES Permit on no less than 12 occasions.

48. On no less than the number of occasions described in Count 1 above, Respondent discharged an estimated 90 percent of the loadings to the POTW, and caused and/or contributed to the pass through of pollutants in violation of the Village of Stockton's NPDES permit and/or the interference of the POTW's treatment processes and operations.

49. The occasions of pass through and/or interference by Respondent described above, are violations of the General Pretreatment Regulations at 40 C.F.R. 403.5(a)(1), the Respondent's 2014 NPDES/NPP permit and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

**Count 2**

**Violations of the Prohibition against Interference and Pass through November 2014**

50. The facts stated in Paragraphs 1 through 44, above, are incorporated herein by reference.

51. Under 40 C.F.R Part 403 and Respondent's NPDES permit, Respondent is prohibited from the discharge of pollutants which cause or contribute to interference or process upset at the Village of Stockton's POTW, or that cause or contribute to the pass through of pollutants in violation of the Village of Stockton's NPDES permit.

52. As described in paragraphs 38-41, the Village of Stockton violated the limits of its NPDES Permit on no less than 15 occasions.

53. On no less than the number of occasions described in Count 2 above, Respondent discharged an estimated 90 percent of the loadings to the POTW, and caused and/or contributed to the pass through of pollutants in violation of the Village of Stockton's NPDES permit and/or the interference of the POTW's treatment processes and operations.

54. The occasions of pass through and/or interference by Respondent described above, are violations of the General Pretreatment Regulations at 40 C.F.R. 403.5(a)(1), the Respondent's 2014 NPDES/NPP permit and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

### **Count 3**

#### **Violations of the prohibition against Interference and Pass through December 2014**

55. The facts stated in Paragraphs 1 through 44, above, are incorporated herein by reference.

56. Under 40 C.F.R Part 403 and Respondent's NPDES permit, Respondent is prohibited from the discharge of pollutants which cause or contribute to interference or process upset at the Village of Stockton's POTW, or that cause or contribute to the pass through of pollutants in violation of the Village of Stockton's NPDES permit.

57. As described in paragraphs 38-41, the Village of Stockton violated the limits of its NPDES Permit on no less than 11 occasions.

58. On no less than the number of occasions described in Count 3 above, Respondent discharged an estimated 90 percent of the loadings to the POTW and caused and/or contributed to the pass through of pollutants in violation of the Village of Stockton's NPDES permit and/or the interference of the POTW's treatment processes and operations.

59. The occasions of pass through and/or interference by Respondent described above, are violations of the General Pretreatment Regulations at 40 C.F.R. 403.5(a)(1), the Respondent's 2014 NPDES/NPP permit and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

**Proposed Civil Penalty**

60. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$187,500, for violations of Section 301 of the CWA that occurred after December 6, 2013 through November 2, 2015.

61. Based upon the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is Fifty Six Thousand Dollars and No Cents (\$56,000.00).

62. Within 30 days after the effective date of this CAFO, Respondent must pay the \$56,000.00 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727

33 Liberty Street  
New York, New York 10045

[In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.]

For Automated Clearinghouse (ACH) also known as REX or remittance express -- ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

[In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.]

A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (E-19J)  
Chicago, Illinois 60604-3590

Joan Rogers (WC-15J)  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

John P Steketee (C-14J)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

63. This civil penalty is not deductible for federal tax purposes.

64. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

65. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorneys' fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

#### **Supplemental Environmental Project**

66. Respondent must complete one supplemental environmental project (SEP) designed to protect the environment and public health and reduce pollutants by installing at the Village of Stockton's POTW instantaneous monitoring equipment for Dissolved Oxygen (DO) and additional equipment to increase oxidation in the POTW's oxidation ditch (DO Project).

67. For the DO Project at the POTW, Respondent must complete the SEP as follows:

- a. Within 30 days of the effective date of the CAFO, Respondent must finalize design of proposed improvements.
- b. Within 45 days of the effective date of the CAFO, Respondent must sign purchase orders and begin procurement of equipment.



- c. Within 60 days of the effective date of the CAFO, Respondent must finalize all delivery of equipment.
- d. Within 90 days of the effective date of the CAFO, Respondent must complete all installation and construction.
- e. Within 120 days of the effective date of the CAFO, Respondent must start up the DO project at the POTW and begin documenting the operations.
- f. Within 180 days of the effective date of the CAFO, Respondent must close out the DO Project.

68. Respondent must spend at least \$60,000.00 to purchase the DO monitoring and additional equipment and ensure the equipment is properly operated for at least 5 years following its installation.

69. Respondent certifies as follows:

*I certify that all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP will be \$60,000.00.*

*I certify that Respondent is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Respondent has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.*

*I certify that the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this*

*CAFO. I further certify that Respondent will not receive reimbursement for any portion of the SEP from another person or entity.*

*I certify that Brewster Cheese Company is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.*

70. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

71. Respondent must submit the reports required by the CAFO to EPA.

72. Respondent must submit a SEP completion report to EPA by December 31, 2019.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;

- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP [quantify the benefits and pollution reductions, if feasible].

73. Respondent must submit all notices and reports required by this CAFO by first class mail to Joan Rogers of the Water Division, U.S. EPA, Region 5 at the address provided in paragraph 62, above.

74. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

*I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.*

75. Following receipt of the SEP completion report described in paragraph 72, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed, or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 79, below.

76. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 77, below.

77. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 67, Respondent must pay a civil penalty of \$83,000.00.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraphs 68, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraphs 68, Respondent must pay a civil penalty of \$10,000.00.

d. If Respondent does not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100.00	1st through 14th day
\$250.00	15th through 30th day
\$500.00	31st day and beyond

78. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

79. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in 63, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

80. Any public statement that Respondent makes referring to the SEP must include the following language, "Brewster Cheese Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the Brewster Cheese Company for violations of Clean Water Act."

81. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to

prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

82. Nothing in this CAFO is intended to, nor will be construed to, constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

83. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

84. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email, with verified receipt, at the following email addresses: [steketee.john@epa.gov](mailto:steketee.john@epa.gov) (for Complainant) and [gcallas@bmsa.com](mailto:gcallas@bmsa.com) (for Respondent). See 40 C.F.R. §§ 22.5-6.

85. Full payment of the penalty as described in paragraphs 61 and 62 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

86. Full payment of the penalty as described in paragraphs 61 and 62 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

87. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

88. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

89. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

90. The terms of this CAFO bind Respondent and its successors and assigns.

91. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

92. Each party agrees to bear its own costs and attorneys' fees in this action.

93. This CAFO constitutes the entire agreement between the parties.

94. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5) and 40 C.F.R. §§ 22.38, 22.45, and which shall be at least 30 days after the CAFO has been signed by the Regional Judicial Officer or Regional Administrator.

**In the Matter of:**  
**Brewster Cheese Company, Stockton, Illinois**  
**Docket No. CWA-05-2019-0005**

**Brewster Cheese Company, Respondent**

  
\_\_\_\_\_  
Tom Murphy  
President  
Brewster Cheese Company

5.10 - 2019  
\_\_\_\_\_  
Date



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**United States Environmental Protection Agency, Complainant**

*Por* Sara Bruneman

Michael D. Harris  
Acting Division Director  
Enforcement and Compliance Assurance Division  
United States Environmental Protection Agency  
Region 5  
Chicago, Illinois

6/5/19  
Date



**In the Matter of:**  
**Brewster Cheese Company, Stockton, Illinois**  
**Docket No. CWA-05-2019-0005**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By:  Date: 8/1/19  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

**In The Matter Of: Brewster Cheese Company**

**CERTIFICATE OF SERVICE**

I certify that today I filed with the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (Mail Code (C-19J)), Chicago, Illinois, 60604-3590, the original and one copy of this Clean Water Act Section 309(g) Consent and Final Order and served the following parties in the following manners at the following addresses a true and correct copy.

Brewster Cheese Company  
Attn: Tom Murphy, President  
800 Wabash Avenue South  
Brewster, Ohio 44613

Copy by U.S. Certified Mail  
Return Receipt Requested No.

7009 1680 0000 7646 1108

Gust Callas  
Counsel to Respondents


Copy by Electronic Mail to  
gcallas@bmsa.com

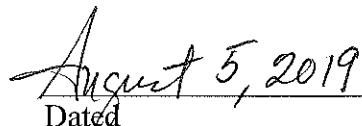
John P Steketee  
Counsel to Complainant

Copy by Electronic Mail to  
steketee.john@epa.gov

Ann Coyle  
Regional Judicial Officer

Copy by Electronic Mail to  
coyle.ann@epa.gov

  
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk

  
\_\_\_\_\_  
Dated