

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

IN THE MATTER OF:

Saputo Cheese USA Inc.
40236 State Highway 10
Delhi, New York 13753

ICIS Tracking No. NYP009808

Respondent

Proceeding pursuant to Section
309(g) of the Clean Water Act, 33
U.S.C. § 1319(g)

**CONSENT AGREEMENT AND
FINAL ORDER**

DOCKET NO. CWA-02-2025-3316

CONSENT AGREEMENT AND FINAL ORDER

Complainant, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”), and Respondent, Saputo Cheese USA Inc. (“Respondent” or “Saputo”), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g)(2)(A) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A).
2. The following Findings of Fact are made, and Order issued, pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the CWA, 33 U.S.C. § 1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2 EPA and since further re-delegated to the Director of the Enforcement and Compliance Assurance Division (“ECAD”) in EPA Region 2.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18 (b)(2) and (3).

4. As set forth below, Complainant alleges that Respondent is liable for certain violations of the CWA in the operation of its dairy product manufacturing facility in the City of Delhi, New York ("Facility"), by introducing turbid wastewater from its facility to the Village of Delhi Wastewater Treatment Plant ("Delhi WWTP") that caused passthrough and interference at the Delhi WWTP. Specifically, Saputo's wastewater caused the Delhi WWTP to discharge water to the West Branch of the Delaware river containing levels of turbidity in excess of the Delhi WWTP's State Pollutant Discharge Elimination System ("SPDES") permit's monthly turbidity limit. Therefore, Complainant alleges that Respondent has violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, and is proposing to assess a civil penalty.
5. Complainant and Respondent agree that settlement of this matter is in the public interest, and that entry of this Agreement and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and potentially complicated litigation between the parties.
6. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies Complainant's allegations of violations contained herein.
7. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Agreement, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
8. Upon incorporation into a Final Order by the ECAD Director, this Agreement applies to, and is binding upon, Complainant, and upon Respondent and Respondent's officers, directors, agents, successors, and assigns. Any change in ownership or corporate organization, structure, or status of Respondent including, but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, unless Complainant, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities.
9. This Consent Agreement and Final Order ("Agreement") contains all settlement terms agreed to by the parties.

II. APPLICABLE LAW

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue NPDES permits for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary.
3. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the New York State Department of Environmental Conservation (“NYSDEC”) is authorized to issue State Pollutant Discharge Elimination System (“SPDES”) permits that are at least as stringent as comparable NPDES permits for most discharges of pollutants to waters of the United States that occur in New York State in lieu of EPA issuing a NPDES permit. The EPA maintains concurrent enforcement authority with New York for any violations of the CWA and/or SPDES permits issued thereunder, pursuant to CWA Sections 309 and 402(i), 33 U.S.C. §§ 1319 and 1342(i).
4. Sections 307(b) and 402(b)(8) of the CWA, 33 U.S.C. §§ 1317(b) and 1342(b)(8), establish the National Pretreatment Program (“NPP”) to regulate discharges from industries to Publicly Owned Treatment Works (“POTW”) as a component of the NPDES permitting program. The NPP requires non-domestic dischargers to treat or control pollutants in their wastewater before discharging it to a POTW.
5. Pursuant to 40 C.F.R. § 403.3(c), the term “Approval Authority” means the EPA Regional Administrator in any state without an approved pretreatment program.
6. Pursuant to 40 C.F.R. § 403.3(f), the Approval Authority is also the “Control Authority” where there is neither an approved state pretreatment program nor an approved POTW pretreatment program under 40 C.F.R. § 403.11.
7. Pursuant to 40 C.F.R. § 403.3(q), a POTW is a treatment works, as defined by Section 212 of the Act, 33 U.S.C. § 1292, which is owned by a State or municipality, and includes, among other things, any devices and any systems that, at a minimum, store, treat, or dispose of municipal waste or industrial wastes, including waste in combined storm water and sanitary sewer systems.
8. Section 307(b) of the CWA, 33 U.S.C. § 1317(b), requires the Administrator to promulgate federal standards for the pretreatment of wastewater discharged to POTWs. The relevant regulatory requirements governing pretreatment are set forth at 40 C.F.R. Part 403.
9. “Owner or operator” is defined in Section 306(a)(4) of the CWA, 33 U.S.C. § 1316(a)(4), as any person who owns, leases, operates, controls, or supervises a source.
10. “Person” is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association, or municipality.
11. The term “source”, as defined in Section 306(a)(3) of the CWA, 33 U.S.C. § 1316(a)(3), means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

12. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
13. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal, and agricultural waste discharged to water.
14. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), makes it unlawful for the owner or operator of any facility that introduces pollutants into a treatment works to operate such facility in violation of any applicable pretreatment standards, general or categorical, which are promulgated by the Administrator.
15. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the Administrator promulgated the “General Pretreatment Regulations for Existing and New Sources of Pollution” (General Pretreatment Regulations) at 40 C.F.R. Part 403.
16. The term “Indirect Discharge” or “Discharge,” as defined in 40 C.F.R. § 403.3(i), means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.
17. The term “Industrial User” (“IU”) or “User,” as defined in 40 C.F.R. § 403.3(j), means a source of Indirect Discharge.
18. Pursuant to 40 C.F.R. § 403.5(a)(1), a “[u]ser may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.”
19. “Pass Through” as defined in 40 C.F.R. § 403.3(p), is a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation.
20. “Interference” as defined in 40 C.F.R. § 403.3(k), includes any discharge which, alone, or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW or its treatment processes or operations and is a cause of a violation of any requirement of a POTW's NPDES permit.
21. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA,

33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$27,378 per violation, with a maximum penalty of \$68,445.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Saputo Cheese USA, Inc. is a corporation and is therefore a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. Respondent owns or operates a facility located at 40236 State Highway 10, Delhi, NY 13753, where it performs, among other things, dairy products manufacturing operations (“the Facility”).
3. Respondent’s Facility introduces wastewater containing effluent from its manufacturing processes into the Village of Delhi Wastewater Treatment Plant (“WWTP”).
4. The wastewater from Respondent’s Facility contains pollutants, within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), including suspended solids from Respondent’s industrial operations.
5. The Delhi WWTP is a treatment works owned by a municipality and is, therefore, a POTW as defined in 33 U.S.C. § 1292(2) and 40 C.F.R. § 403.3(q).
6. Respondent’s Facility introduces pollutants into the Delhi WWTP from a non-domestic source and is, therefore, an IU or User within the meaning of 40 C.F.R. § 403.3(j).
7. Respondent’s Facility is subject to the General Pretreatment Regulations, since it is an existing source regulated under Section 307 of the Act, 33 U.S.C. § 1317, that introduces pollutants into a POTW.
8. The Delhi WWTP discharges wastewater to the West Branch of the Delaware River pursuant to SPDES permit NY0068292, which, among other things, sets a maximum monthly turbidity limit of 5 percent of samples (2160 minutes per month for Delhi’s continuous turbidity monitoring) over 0.5 nephelometric turbidity units (NTUs).
9. The Delhi WWTP does not have an approved pretreatment program, and the State of New York is not approved to operate a State pretreatment program in New York. Therefore, pursuant to 40 C.F.R. §§ 403.3(c) and (f), EPA is the pretreatment Control Authority for the Saputo Facility.
10. On February 1-7 and 9, 2024, discharges from Respondent’s Facility caused or were a contributing cause to the Delhi WWTP’s turbidity levels exceeding 0.5 NTUs for a total of 7767 minutes during the month of February 2024.
11. On December 19, 2024, in a letter to EPA, Respondent detailed that a biological die-off in the Moving Bed Biofilm Reactor component of the Facility’s pretreatment system, which was

caused by a mixing of milk and glycol due to a failure in the Facility's glycol cooling system, caused increased turbidity of the Facility's wastewater discharges to the Delhi WWTP on the dates in Paragraph III.10, above.

12. Therefore, based on the above findings, Respondent has violated 40 C.F.R. § 403.5(a)(1) by introducing pollutants that caused pass through and interference at the Delhi WWTP.

IV. TERMS OF SETTLEMENT

1. Upon consideration of the factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is the amount of **twelve thousand five hundred dollars (\$12,500)** ("Assessed Penalty").
2. Respondent consents to the issuance of this Agreement and agrees to pay the above civil penalty within 30 days after the date that the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").
3. Respondent shall pay the Assessed Penalty and, subject to Paragraph 5, any interest, fees, and other charges due using any method, or combination of appropriate methods as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
4. When making a payment, Respondent shall:
 - a. Identify every payment with Respondent's name and the docket number of this Agreement, and
 - b. Concurrently with any payments or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Justine Modigliani, P.E., Acting Manager
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

and

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit or debit card payments, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

5. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
 - a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate; any lower rate would fail to provide Respondent adequate incentive for timely payment.
 - b. Handling Charges. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a reasonable charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additionally, reasonable handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
6. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Actions that EPA may take include, but are not limited to, the following:
 - a. Refer the debt to a credit reporting agency or collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
- 7. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
- 8. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

V. OTHER TERMS AND CONDITIONS

- 1. Respondent knowingly and explicitly waives its right to request or to seek any hearing on, or judicial review of, any of the terms, conditions, or allegations contained in this Agreement.
- 2. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
- 3. Nothing in this Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of the Agreement.
- 4. By signing this Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Agreement.
- 5. This Agreement shall apply to and be binding upon Respondent, as well as applying to and binding upon the Respondent's officers, directors, and employees, in their capacities as representatives of Respondent as well as on the Respondent's successors and assigns, including, but not limited to, Respondent's subsequent purchasers.

6. Respondent's compliance with this Agreement resolves Respondent's liability for federal civil or administrative penalties under Section 309(d) and 309(g) of the Act, 33 U.S.C. § 1319(d) and (g), for the violations alleged in this Agreement. This Agreement shall not affect EPA's right to pursue additional injunctive or other equitable relief if current remedial actions are insufficient or criminal sanctions for any violations of law alleged in this Agreement should EPA discover additional facts that warrant such sanctions. This Agreement shall not affect Respondent's right to assert any defense in any action by EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
7. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, nor waiver of any defense, objection, or response the Respondent may assert in response to any claim that the Agreement is violated. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
8. Nothing in this Agreement is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
9. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
10. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45. EPA may withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.
11. If comments received during the public comment period do not require withdrawal by the EPA from this Agreement, the Parties agree to submit this Agreement to the ECAD Director ten (10) days after closure of the public comment period, with a request that it be incorporated into a Final Order.
12. This Agreement, upon incorporation into a Final Order by the ECAD Director, and full satisfaction by the Parties, shall be a complete, full, and final settlement of the civil penalty owed for the violations alleged in this Agreement.
13. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Agreement.

14. Respondent consents to service upon Respondent of a copy of the fully executed Agreement by an EPA employee other than the Regional Hearing Clerk.

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2



Eric Hollekim, Senior Vice-President
Quality Assurance & Food Safety
Saputo Cheese USA Inc.

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the above Consent Agreement ("Agreement"), resolving the above matter, is hereby approved and incorporated by reference into this Final Order. Respondent is hereby **ORDERED** to comply with all of the terms of the Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2