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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2015-0135
)	
CONAGRA FOODS LAMB WESTON, INC.)	CONSENT AGREEMENT AND FINAL ORDER
)	
Twin Falls, Idaho)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and ConAgra

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1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
(206) 553-1037

Foods Lamb Weston, Inc. ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Discharge without a permit

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the

waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

3.3 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.” The term “navigable waters” is defined as “waters of the United States.” 33 U.S.C. § 1362(7). 40 C.F.R. § 122.2 defines “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters.

3.4. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include sewage, garbage, sewage sludge, chemical wastes, biological materials and industrial waste.

3.5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.6. Respondent is a corporation organized under the laws of the State of Delaware and is a “person” under CWA § 502(5), 33 U.S.C. § 1362(5).

3.7. Respondent owns and/or operates a potato processing (“Facility”) located in Twin Falls, Idaho (“City”). The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.8. On December 2, 2014, Respondent discharged aerated foam from a vent that contained process wastewater and sanitary waste from the Facility to Rock Creek which flows to the Snake River. Respondent did not have a NPDES permit authorizing the discharge.

3.9. The Snake River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce. As such, Rock Creek and the Snake River are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” as defined in 40 C.F.R. § 122.2.

3.10. The discharge on December 2, 2014, was unlawful pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Pretreatment standard violations

3.11. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the operation of any source in violation of any applicable pretreatment standard established pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b).

3.12. Section 307(b)(1) of the CWA, 33 U.S.C. § 1317(b)(1), requires EPA to establish pretreatment standards to prevent the discharge into publicly owned treatment works of pollutants that are determined not to be susceptible to treatment or that would interfere with the operation of the treatment works. Regulations regarding such pretreatment standards are found at 40 C.F.R. § 403.

3.13. The Facility is a “source” and Respondent is an “owner or operator of any source” as those terms are used in Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

3.14. The City wastewater treatment plant is a publicly owned treatment works (“POTW”) as that term is defined in 40 C.F.R. § 403.3(q).

3.15. Respondent discharges process wastewater from the Facility to the City POTW, and therefore is an “industrial user” or “user” as defined in 40 C.F.R. § 403.3(j).

3.16. Respondent is subject to the pretreatment requirements set forth in 40 C.F.R. Part 403.

3.17. Section 403.5(b)(2) prohibits discharges with a pH lower than 5.0 into a POTW.

3.18. Sampling data from the Facility indicate that Respondent discharged wastewater with a pH lower than 5.0 to the POTW on August 7, 2012, January 29, 2014, and May 23, 2015.

3.19. The violations alleged in Paragraph 3.18 constitute three violations of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$21,500.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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Seattle, Washington 98101
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By U.S. Postal Mail:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

By UPS, Federal Express or overnight mail:
U.S. Bank Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
St. Louis, MO 63101

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs and additional penalties described below. In any collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

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4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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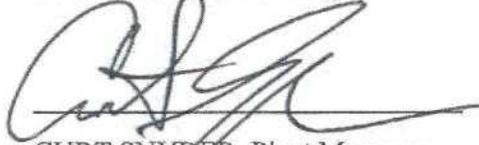
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

7/21/15

FOR RESPONDENT:

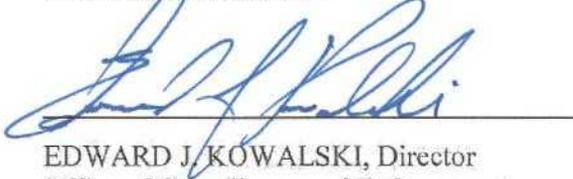


CURT SNYDER, Plant Manager
ConAgra Foods Lamb Weston, Inc.

DATED:

7/21/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 31st day of August, 2015.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

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Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : CONAGRA FOODS LAMB WESTON, INC.** Docket No.: **CWA-10-2015-0135**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie L. Mairs, Esq.
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-113, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kevin Beaton, Esq.
Stoel Rives LLP
101 South Capitol Blvd., Suite 1900
Boise, Idaho 83702

DATED this 1st day of September, 2015


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

