

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
) Docket No. CWA-07-2012-0037
)
GRAIN PROCESSING CORPORATION,)
)
) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
Respondent,)
)
Proceedings under Section 1319(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency's (EPA's) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator of EPA Region 7, who in turn has delegated it to the Director of the Wetlands and Pesticides Division of EPA Region 7 (Complainant).

4. Respondent is Grain Processing Corporation (hereafter GPC or Respondent), a corporation incorporated under the laws of the state of Iowa and authorized to conduct business in Iowa.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "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."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the "waters of the United States," which are defined at 40 C.F.R. § 122.2 to include all interstate waters.

11. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

12. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

13. 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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

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

16. Respondent, Grain Processing Corporation, owns and operates a facility that manufactures corn-based products located at 1600 Oregon Street in Muscatine, Iowa. GPC’s Muscatine facility operates an activated sludge system for the treatment of wastewater. The facility has six outfalls that discharge process wastewater directly to the Mississippi River, as well as a seventh calculated outfall that measures the net of the six discharging outfalls against the influent to the plant from the Mississippi River.

17. Respondent’s outfalls are “point sources” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

18. Respondent’s facility causes the “discharge of pollutants” as defined by the CWA Section 502(12), 33 U.S.C. § 1362(12).

19. Respondent’s facility discharges pollutants via outfalls into the Mississippi River, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

20. Respondent’s discharge of pollutants from its outfalls requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. IDNR granted NPDES Permit No. IA-0003441 to Respondent for discharges from its wastewater outfalls into the Mississippi River. The permit (hereafter “1998 NPDES permit”) became effective March 24, 1998, and expired March 23, 2003. The 1998 NPDES permit has been administratively extended by IDNR.

22. The Monitoring and Reporting Requirements section of Respondent’s 1998 NPDES permit requires Respondent to monitor flow at each outfall seven times per week and report this data. Paragraph (a) of this section requires that the samples and measurements taken shall be representative of the volume and nature of the monitored wastewater.

23. The Monitoring and Reporting Requirements section of Respondent’s 1998 NPDES permit requires Respondent to conduct a 30-minute settleability test seven days per

week on the aeration basin contents for process waste running through the wastewater treatment plant and leading to Outfall 006.

24. Paragraph 8 of the Standard Conditions section of Respondent's 1998 NPDES permit requires that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. (*See also* Iowa Administrative Code (IAC) 567.64.7(5)(f) and 40 C.F.R. § 122.41(e).)

25. The Effluent Limitations section of Respondent's 1998 NPDES permit prohibits discharging pollutants except in compliance with the effluent limitations listed therein, including the following:

- a. biochemical oxygen demand (BOD₅) – for combined Outfall 801, a 30-day average mass limitation of 15,417.00 pounds per day (ppd), and a daily maximum mass limitation of 42,631.00 ppd;
- b. total suspended solids (TSS) – for combined Outfall 801, a 30-day average mass limitation of 16,941.00 ppd, and a daily maximum mass limitation of 63,156.00 ppd;
- c. temperature
 - i. for Outfall 001, a daily maximum limitation of 150.0 degrees Fahrenheit;
 - ii. for Outfall 002, a daily maximum limitation of 120.0 degrees Fahrenheit;
 - iii. for Outfall 003, a daily maximum limitation of 130.0 degrees Fahrenheit;
 - iv. for Outfall 004, a daily maximum limitation of 110.0 degrees Fahrenheit;
 - v. for Outfall 005, a daily maximum limitation of 125.0 degrees Fahrenheit;
and
 - vi. for Outfall 006, a daily maximum limitation of 110.0 degrees Fahrenheit;
and
- d. pH – for Outfalls 001, 002, 003, 004, 005, and 006, a 7-day average concentration limitation of 6.0 standard units, and a daily maximum concentration limitation of 9.0 standard units.

26. On October 25 through 28, 2010, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of Respondent's facility under the

authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its NPDES permit and the CWA.

27. During the EPA inspection, the inspector collected wastewater samples from Outfalls 001-006, reviewed Respondent's records related to its 1998 NPDES permit, and observed the wastewater treatment facility.

FINDINGS OF VIOLATION

28. The facts stated in Paragraphs 15 through 27 above are herein incorporated.

29. Based on observations documented during the EPA inspection, EPA finds that Respondent violated Section 301(a) of the act, 33 U.S.C. § 1311(a), by violating the terms and conditions of its NPDES permit, in at least the following ways:

- a. Respondent violated the Monitoring and Reporting requirements of its NPDES permit by:
 - i. failing to take measurements that were representative of the volume and nature of the wastewater. Specifically, Respondent took measurements from improperly functioning flow meters at Outfalls 002, 003, and 004, resulting in the reporting of unrepresentative, identical flow measurements for at least 22 periods of at least three consecutive days each between January 2008 and January 2010; and
 - ii. failing to perform the daily 30-minute settleability test on the contents of the three aeration basins of the wastewater treatment plant during the period from October 2006 through September 2010.
- b. Respondent violated Paragraph 8 of the Standard Conditions of its NPDES permit requiring that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order, as evidenced by:
 - i. air distribution equipment in the three aeration basins that was not maintained to obtain uniform aeration;
 - ii. excessive build-up of algae on the weirs on the aeration basins and clarifiers;
 - iii. solids floating over the entire surface of the second clarifier;
 - iv. broken and rusted weirs on the clarifiers;
 - v. a broken agitator on anaerobic digester #1;
 - vi. a starch spill near Tank Farm #1;
 - vii. a leak near Drier House #1; and
 - viii. malfunctioning flow meters.

- c. Respondent violated the Effluent Limitations of its NPDES permit by failing to meet the BOD₅ daily maximum concentration limit during the months of October 2007, February and July 2009, and April 2011; and by failing to meet the BOD₅ 30-day average mass limit during the months of January and October 2010.
- d. Respondent violated the Effluent Limitations of its NPDES permit by failing to meet the TSS daily maximum mass limit during the months of February and May 2009, March 2010, and February 2011; and by failing to meet the TSS 30-day average mass limit during the months of May 2009, January 2010, and August 2010.
- e. Respondent violated the Effluent Limitations of its NPDES permit by failing to meet the temperature daily maximum limit at Outfall 002 during the month of November 2010; at Outfall 003 during the months of November 2008, January, February, April, and November 2010, and March, May, and July 2011; and at Outfall 004 during the month of July 2011.
- f. Respondent violated the Effluent Limitations of its NPDES permit by failing to meet the pH limit at Outfall 001 during the month of February 2010, at Outfall 002 during the month November 2010, and at Outfall 004 during the month of January 2010.

30. Respondent's violations of the terms and conditions of its 1998 NPDES permit, as described in Paragraph 29, above, are violations of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

31. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 41 below.

CONSENT AGREEMENT

32. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

33. Respondent admits the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

34. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

35. Respondent waives any right to contest the allegations set forth in this Consent Agreement/Final Order and its right to appeal this Consent Agreement and the accompanying Final Order.

36. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

37. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

39. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent is in compliance with all requirements of the CWA and its NPDES permit, or, to the extent such compliance is not yet fully achieved, with the terms of the Administrative Order for Compliance issued by EPA on July 29, 2011, EPA Docket No. CWA-07-2011-0090.

40. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 39 of this Consent Agreement/Final Order.

41. Respondent consents to the issuance of the Final Order hereinafter recited and agrees to pay a mitigated civil penalty in the amount of \$129,000.

42. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

Reservation of Rights

43. EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

44. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of One Hundred Twenty-Nine Thousand dollars (\$129,000) within thirty calendar days of the effective date of this Final Order. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2012-0037 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

2. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. This Final Order shall apply to and be binding upon Respondent, his agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein, comply with the terms of this Consent Agreement/Final Order.

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

7. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

4-9-13
Date


Erin Weekley
Assistant Regional Counsel

4/9/13
Date

RESPONDENT:
GRAIN PROCESSING CORPORATION

Date 2/12/13

JOHN C. THORPE
Name


Signature

PRESIDENT
Title

IT IS SO ORDERED.

April 9, 2013
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF Grain Processing Corporation, Respondent
Docket No. CWA-07-2012-0037

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

weekley.erin@epa.gov

Copy by First Class Mail to Respondent:

Charles F. Becker
Belin McCormick, P.C.
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309

Eric J. Thomsen
Registered Agent
Grain Processing Corporation
1600 Oregon Street
Muscatine, Iowa 52761

Dennis Ostwinkle
Iowa Department of Natural Resources
Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

Dated: 4/10/13


Kathy Robinson
Hearing Clerk, Region 7