

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

2019 JUN -6 PM 12:39

11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
American Natural Processors, Inc.)
)
Respondent)
)
Proceedings under Section 309(g))
And Section 311(b)(6) of the)
Clean Water Act, 33 U.S.C. §§ 1319(g))
And 1321(b)(6))
_____)

Docket No. CWA-07-2017-0106

COMPLAINT AND
CONSENT AGREEMENT/
FINAL ORDER

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 309(g) and 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency, Region 7 (“EPA”) and American Natural Processors, Inc. (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent has violated Sections 301, 311 and 402 of the CWA, 33 U.S.C. §§ 1311, 1321 and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated these authorities to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water,

Wetlands and Pesticides Division of EPA, Region 7, and the authority under Section 311(b)(6) to the Director of the Air and Waste Management Division (collectively referred to as the “Complainant”).

5. Respondent is a corporation authorized to conduct business under the laws of Iowa. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

Statutory and Regulatory Framework

Discharge of a Pollutant

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

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 402(a) of the CWA, 33 U.S.C. § 1342(a), sets forth requirements for the issuance of individual NPDES permits for the discharge of pollutants from a point source into a navigable water.

9. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Stormwater

10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

11. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

12. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

13. 40 C.F.R. § 122.26(b)(14)(ii) and (xi) define “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified as Standard Industrial Classification (“SIC”) Codes 2075, 2076 and 2079 (respectively: Soybean Oil Mill; Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean; and Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, Not Elsewhere Classified) and 2869 (Industrial Organic Chemicals, Not Elsewhere Classified).

14. The IDNR issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity. The most recent 5-year permit has an effective date of October 1, 2012, and an expiration date of October 1, 2017, with previous 5-year permits having been issued in 1997, 2002 and 2007.

15. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent (“NOI”) to the IDNR in accordance with the requirements of Part II.C of the permit. As required by Section III.C.1, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in Section III.C.4 of the permit, must be completed and maintained on site before the NOI is submitted to the IDNR and fully implemented concurrently with operations at the facility.

Spill Prevention Control and Countermeasure Regulations

16. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

17. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”).

18. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

19. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

20. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

General Allegations

Allegations Relevant to Sections 301 and 402

21. Respondent is and was at all times relevant to this action the owner and/or operator of a vegetable oil production and storage facility (“Facility”), located at 6081 159th Street, Galva, Iowa 51020, and operating under SIC codes 2075, 2076, 2079 and/or 2869.

22. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility, flow overland, and discharge into a perennial unnamed tributary to the Maple River.

23. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

24. Stormwater from the Facility contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

25. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. The Maple River and its perennial unnamed tributary, as identified in Paragraph 22, above, are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

27. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

28. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(xi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

29. IDNR issued coverage under NPDES General Permit No. 1, Permit Authorization No. 16686-16459 (hereafter “general permit”), to Respondent, effective December 31, 2009. The general permit was initially granted to Maple River Energy, LLC and subsequently transferred to Respondent American Natural Processors, Inc. in 2013. Upon Respondent’s payment of renewal fees and submission of applications for renewal, the IDNR reissued the

general permit to Respondent, with the current Permit being effective from July 3, 2013, through October 1, 2017. The general permit governs stormwater discharges at the Facility associated with industrial activity, including facilities with the SIC Code of 2075, 2076, 2079 and 2869.

30. Respondent also directly discharges wastewater from its Facility through an outfall into the perennial unnamed tributary to the Maple River.

31. The wastewater discharge from Respondent's outfall into the unnamed tributary and thereafter to the Maple River is a "discharge of a pollutant" as defined by 40 C.F.R. § 122.2.

32. IDNR issued an individual wastewater NPDES Permit, No. IA0082121 (hereafter "individual permit"), to Maple River LLC in 2008. The individual permit was subsequently transferred to Respondent for its direct discharge of pollutants from Outfall 001 into a navigable water, effective December 30, 2008 to December 29, 2013. The individual permit was administratively continued on December 30, 2013.

33. Respondent has operated under both permits at all times relevant to this Order. At all relevant times related to these proceedings, the provisions of the permits applicable to Respondent have remained substantially the same.

34. On April 20, 2015, Respondent reported a spill and subsequent unauthorized discharge to IDNR. The Facility's valve system for a tank malfunctioned and released approximately 39,306 gallons of process water containing approximately 50 gallons of vegetable oil and grease through Outfall 001 into the perennial unnamed tributary to Maple Creek. IDNR reported grease-covered vegetation approximately ¼ of a mile downstream of the outfall in the perennial unnamed tributary.

35. On or about July 19-21 2016, the EPA performed an Industrial Stormwater Compliance Evaluation of Respondent's Facility relating to the general permit ("Stormwater Inspection"). During the same time, EPA also performed a Compliance Sampling Inspection relating to the individual permit ("Wastewater Inspection") (collectively, "Inspections"). Each inspection was performed under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its permits and the CWA.

36. During the Inspections, the EPA inspector reviewed Respondent's records relating to the permits and observed the Facility and the receiving perennial unnamed tributary to which stormwater and wastewater are discharged.

37. At the time of the Stormwater Inspection, Respondent was unable to provide a signed copy of its SWPPP with supporting documents to the EPA inspector. Respondent only provided an unsigned, draft copy of the Facility's SWPPP.

38. At the time of the Inspections, the EPA inspector issued to Respondent a Notice of Potential Violation ("NOPV") identifying issues that may be violations of Respondent's Permits, including, but not limited to: individual permit limit exceedances, no documentation provided for

periodic stormwater facility inspections and employee training, and failing to update or maintain the Facility's SWPPP.

39. On or about July 29, 2016, Respondent provided to the EPA a response to the NOPV and copies of forms to be used for periodic facility stormwater inspections. On or about February 2, 2017, Respondent also provided an updated copy of the facility SWPPP.

Allegations Relevant to Section 311

40. Respondent is and was at all times relevant to this action the "owner/operator" of the Facility, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

41. The Facility has an estimated aggregate above-ground storage capacity of 513,310 gallons of vegetable oil.

42. Respondent's Facility is located approximately 1300 feet from a perennial unnamed tributary to the Maple River.

43. Respondent is engaged in storing, processing, using or consuming oil or oil products, as defined by 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, located at the Facility.

44. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

45. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

46. The Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

47. Pursuant to Section 311(j)(1)(C) of the CWA, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

48. On or about November 8, 2016, EPA conducted an inspection of Respondent's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), ("SPCC Inspection"). At the time of EPA's inspection, Respondent did not have a prepared or implemented SPCC plan or records of implementation of the SPCC program, as required by 40 C.F.R. Part 112.

**COUNT I
Unauthorized Discharge of a Pollutant**

49. The allegations stated in Paragraphs 1 through 48 above are re-alleged and incorporated herein by reference.

50. On or about April 20, 2015, Respondent discharged process water through Outfall 001 that, due to an uncontrolled discharge within the Facility, containing approximately 50 gallons of vegetable oil. The discharge containing vegetable oil entered the perennial unnamed tributary of the Maple River.

51. Neither the general permit nor the individual permit authorized the discharge of vegetable oil from Respondent's Facility.

52. Respondent's discharge of vegetable oil is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and implementing regulations.

**COUNT II
Individual Permit Effluent Limit Violations**

53. The allegations stated in Paragraphs 1 through 52 above are re-alleged and incorporated herein by reference.

54. Respondent's individual permit, NPDES Permit No., IA0082121, set the following effluent limitations for the Facility:

- a. Iron shall not exceed 1.004 milligrams per liter ("mg/L") for both the 30-day average and daily maximum.
- b. Total Suspended Solids ("TSS") shall not exceed a 30-day average of 30mg/L, with a 45mg/L daily maximum.
- c. pH must be maintained at 6.3 standard units ("SU") or above for a seven-day average (per minute), with a daily maximum of 9.0 SU.
- d. Sulfate shall not exceed 1520 mg/L for both a 30-day average and daily maximum.

55. From December 2013 through April 2016, the following effluent exceedances were documented and recorded at the Facility, contrary to the conditions of the individual permit:

- a. Iron: ten 30-day average and ten daily maximum limit exceedances from December 2013 through April 2016.

- b. TSS: eight 30-day average and seven daily maximum limit exceedances from January 2014 through March 2016.
- c. pH: seven daily maximum limit exceedances from June 2014 through June 2015.
- d. Sulfate: one 30-day average and one daily maximum limit exceedance in January 2014.

56. Respondent's effluent exceedances are violations of the terms and conditions of the individual permit, and are violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

COUNT III:

Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP

57. The allegations stated in Paragraphs 1 through 56 above are re-alleged and incorporated herein by reference.

58. Part III.C. of Respondent's general permit requires that a SWPPP be developed for each facility covered by the general permit, and that the SWPPP shall: be prepared in accordance with good engineering practices; identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility; and describe and ensure the implementation of practices which will be used to reduce pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

59. Part III.C.3. of Respondent's general permit requires that the SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential to discharge pollutants, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activities.

60. Based on observations and information collected during the Stormwater Inspection, Respondent's SWPPP failed to meet the following conditions of the general permit:

- a. Respondent's SWPPP failed to develop a plan to provide training for personnel at all levels of responsibility of the components and goals of the stormwater pollution prevention plan.
- b. Respondent failed to update and amend the SWPPP to completely include and reference information subsequent to the rebranding of the Facility and process changes from Maple River Energy, LLC to American Natural Processors, Inc.
- c. Respondent failed, at the time of the Stormwater Inspection, to have a signed and final copy of its SWPPP.

61. Respondent's failure to develop an adequate SWPPP and failure to properly amend the SWPPP to accurately reflect changes to the Facility are violations of the general permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**COUNT IV
Failure to Document Employee Training**

62. The allegations stated in Paragraphs 1 through 61 above are re-alleged and incorporated herein by reference.

63. Part III.C.4.B.(8) of Respondent's general permit requires that employee training programs shall inform all personnel at all levels of responsibility of the components and goals of the SWPPP. The permit requires that the SWPPP identify periodic dates for such training.

64. Part IV of Respondent's SWPPP states that "All appropriate employees whose job could impact stormwater pollution prevention will be trained on all aspects of the Storm Water Pollution Prevention Plan on an annual or as needed basis."

65. Respondent failed to produce documentation of employee training for calendar years 2014 and 2015, in violation of the general permit.

66. Respondent's failure to document employee SWPPP training for Facility employees is a violation of the terms and conditions of its general permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**COUNT V
Failure to Document Inspections**

67. The allegations stated in Paragraphs 1 through 66 above are re-alleged and incorporated herein by reference.

68. Part III.4.C. of the Respondent's general permit requires qualified personnel to conduct visual inspections annually, at minimum, of equipment and the plant area. Part III.4.C.(3). of the general permit requires that inspection reports be retained for at least three years.

69. Section 7.1 of Respondent's SWPPP designates that "[c]omprehensive formal site inspections of ANP's stormwater control system shall be made annually."

70. Respondent's failure to document annual inspections of the Facility's stormwater control system and the site is a violation of the terms and conditions of its general permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

71. As alleged in the preceding Counts I through V, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4,

Respondent is liable for civil penalties of up to 16,000 per day for each day during which the violation continues, up to a maximum of 187,500, for Counts I and II, and Respondent is liable for civil penalties of up to \$20,965 per day for each day during which the violation continues, up to a maximum of \$262,066, for Counts III-IV.

**COUNT VI
Failure to Prepare and Implement an SPCC Plan**

72. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 71 above, as if fully set forth herein.

73. At the time of the November 2016 SPCC Inspection, and thereafter, Respondent failed to prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3, as follows:

- a. Respondent failed to implement a procedure to ensure the sump was pumped down to provide adequate secondary containment for the loading/unloading of oil to tanker trucks, in violation of 40 C.F.R. § 112.7(c).
- b. Respondent failed to perform or keep record of inspections or tests conducted monthly or periodically, including periodic visual inspections of the storage tanks, containment, pipes, pumps, valves and associated appurtenances, in violation of 40 C.F.R. § 112.7(e).
- c. Respondent failed to conduct training for oil handling personnel on operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the Facility SPCC Plan; and failed to conduct annual discharge prevention briefings for oil handling personnel, in violation of 40 C.F.R. § 112.7(f)(1) and (f)(3).
- d. Respondent failed to conduct any integrity testing of its storage tanks and had no baseline data on each tank's condition, in violation of 40 C.F.R. § 112.12(c)(6).

74. Respondent's failure to prepare and implement an SPCC Plan for the Facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 73, violated 40 C.F.R. § 112.3.

75. As alleged in Count V, and pursuant to Section 311(b)(6)(B)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for a civil penalty of up to \$18,107 per day for each day during which the violation continues, not exceeding \$226,338.

CONSENT AGREEMENT

76. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.
77. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.
78. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.
79. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.
80. Respondent and Complainant agree to conciliate 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 incurred as a result of this action.
81. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.
82. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.
83. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with the applicable requirements of the CWA, NPDES General Permit No. 1, Permit Authorization No. IA-10124-9928, and Sections 301, 311, and 402 of the CWA, 33 U.S.C. §§ 1311, 1321, and 1342, and applicable regulations.

Supplemental Environmental Project

84. In settlement of this matter, Respondent shall complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements.
- a. **Project Description:** Respondent shall purchase spill response and clean-up equipment, consisting of a trailer with a water pump and a self-priming semi-trash water pump, to assist in spill response and clean-up for the Galva Fire Department, Galva, Iowa. The project is further described in Appendix A of this Consent Agreement and Final Order;

- b. SEP Cost: the total expenditure for the SEP shall be not less than \$5,000;
- c. Completion Date: The purchase of equipment described in subparagraph a, above, shall be completed by no later than ninety (90) days after the effective date of this Consent Agreement/Final Order.

85. Within thirty (30) days of the SEP Completion Date, as identified in Paragraph 84.c., above, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below.

- a. The SEP Completion Report shall contain the following:
 - (i) A detailed description of the equipment purchased to implement the SEP;
 - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; and
 - (iii) The following certification signed by Respondent or its authorized representative:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

Eduardo Ortiz, or his successor
AWMD/CORP
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

- c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 86, below.

86. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-on Amount:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 84, above and/or to the extent that the actual expenditures for the SEP do not

equal or exceed the SEP Cost described in Paragraph 84.b., above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$5,000;
- (ii) If the SEP is completed in accordance with Paragraph 84, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$1,000;
- (iii) Respondent shall not be liable for stipulated penalties if:
 - (a) the SEP is not completed in accordance with Paragraph 84, but the Complainant determines that the Respondent: (1) made good faith and timely efforts to complete the project; and (2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; or
 - (b) the SEP is completed in accordance with Paragraph 84, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project.
- (iv) Respondent shall pay a stipulated penalty in the amount of \$50 for each day:
 - (a) it fails to submit the SEP Completion Report after the due date specified in Paragraph 84, above, until the report is submitted; and
 - (b) it fails to submit any other report required by Paragraph 85, above, after the report was originally due until the report is submitted.

- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in Paragraph 95, below. Method of payment shall be in accordance with the provisions of Paragraphs 92 and 93, below.

87. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

88. Respondent further certifies that it 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. Respondent further certifies that, to the best of its 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 the EPA within two years of the date of

this settlement (unless the project was barred from funding as statutorily ineligible). For the 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 yet expired.

89. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: *"This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."*

Penalty Payment

90. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty to be paid in full no later than thirty (30) days after the effective date of this Consent Agreement/Final Order as set forth below, as follows:

- i. **Twenty-Five Thousand Dollars (\$25,000)**, for Counts I through V pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g); and
- ii. **Fifteen Thousand Dollars (\$15,000)** for Count VI, pursuant to the authorities of Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

91. The payment of penalties for Counts I through V must reference docket number "CWA-07-2017-0106" and be remitted using one of the payment methods specified in Appendix B to this Order.

92. The payment of penalties for Count VI must reference docket number "CWA-07-2017-0106." Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

93. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

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

and

Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

94. Respondent agrees that 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.

95. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any 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 or interest.

Effect of Settlement and Reservation of Rights

96. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

97. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 83 of this Consent Agreement/Final Order.

98. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

99. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. § 1319 and 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

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

General Provisions

101. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

102. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

103. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

104. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

105. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

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

5/30/18

Date



Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Office of Regional Counsel

For the Respondent, American Natural Processors, Inc.:

Julie Schuett
Signature

4-4-18
Date

Julie Schuett
Name

CFD
Title

FINAL ORDER

Pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), and the 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: June 6, 2018

Karina Borromeo
Signature

Karina Borromeo
Name

Regional Judicial Officer
Title

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by First Class Mail to Respondent:

Sam Jennett
Director of Operations
American Natural Processors
600 Stevens Port Drive, Suite 101
Dakota Dunes, SD 57049

Copy emailed to Attorney for Respondent:

Bruce Smith
smithb@goosmannlaw.com

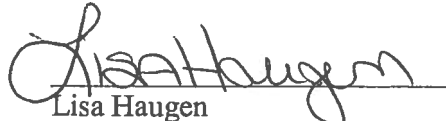
Copy emailed to Attorney for Complainant:

Patricia Gillispie Miller
miller.patriciag@epa.gov

Copy by First Class Mail to the Iowa Department of Natural Resources:

Ted Petersen, Supervisor
IDNR Field Office #5
7900 Hickman Rd, Suite 200
Windsor Heights, IA 50324

June 6, 2018
Date


Lisa Haugen
Hearing Clerk, Region 7

**APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Spill Response and Clean-up Equipment to be Purchased
for the Galva, Iowa Fire Department**

Water Trailer with Pump

2012 Magnum, MVT500

Estimated cost: \$3,390 + \$805 shipping = \$4,195

Water Pump

NorthStar Self-Priming Semi-Trash Water Pump

4 in. Ports, 23040 GPH, ¾ Solids Capacity. 270cc Honda GX270 Engine

Estimated cost: \$1000

Total estimated SEP cost: \$5,195

APPENDIX B
PENALTY PAYMENT INFORMATION

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ONLINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter "SFO 1.1" in the search field

Open form and complete required fields.