

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
C.J. Foods, Inc.) Docket No. CWA-07-2011-0095
71045 Highway 50, PO Box 348)
Pawnee City, Nebraska 68420)
) FINDINGS OF VIOLATION
Respondent) AND ORDER FOR COMPLIANCE
)
)
Proceeding under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

I. Statutory Authority

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region 7.
2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits discharge of pollutants from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. Section 402 provides that pollutants may be discharged into navigable waters of the United States only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that section. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works ("POTW").
3. Pursuant to Section 307(b) of the Act, 33 U.S.C. § 1317(b), EPA promulgated regulations at 40 C.F.R. Part 403 establishing the General Pretreatment Regulations. These regulations are designed to control the introduction of pollutants into POTWs which may pass through or interfere with the treatment processes of such treatment works or which may contaminate sewage sludge.

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

- a. “Interference” is defined, in pertinent part, as a discharge of pollutants, which alone or in conjunction with other sources, inhibits or disrupts the treatment processes or operations of a POTW, and which therefore is a cause of a violation of any requirement of a POTW’s NPDES permit; and
- b. “Pass through” is defined, in pertinent part, as a discharge of pollutants which exits a POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with other sources, is a cause of a violation of any requirement of a POTW’s NPDES permit.

5. Pursuant to 40 C.F.R. § 403.5(a), users are prohibited from introducing pollutants into a POTW which result in the “pass through” of pollutants through the POTW, or “interference” with the operations of the POTW.

6. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency in Nebraska with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and the Pretreatment program, pursuant to Section 307 of the CWA § 1317, and the respective implementing regulations. EPA retains concurrent enforcement authority with authorized state NPDES and Pretreatment programs under Sections 309 and 402 of the CWA, 33 U.S.C. §§ 1319 and 1342.

II. General Factual Allegations

7. C.J. Foods, Inc. (“Respondent”), is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), incorporated and doing business in the state of Nebraska.

8. At all times relevant, Respondent was, and still is, the owner and/or operator of a dry pet foods manufacturing facility located at 71045 Highway 50, Pawnee City, Nebraska 68420 (the “facility”).

9. The city of Pawnee City, Nebraska (hereafter “City”) owns and operates a POTW south of Pawnee City, Nebraska. The City’s POTW includes a wastewater treatment plant and sewage collection system, which receive wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent’s facility.

10. The City’s POTW is a “point source” that “discharges pollutants” into Turkey Creek, a tributary of the Nemaha River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12).

11. Turkey Creek is considered “navigable waters” of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
12. On or about January 1, 2010, the NDEQ issued NPDES permit number NE0042048 to the City pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
13. The City’s NPDES Permit contains limitations for discharges of effluent from the City’s POTW to Turkey Creek.
14. Part V, B of the City’s NPDES Permit prohibits discharges that contain pollutants at concentrations or levels that produce objectionable films, colors, turbidity, deposits, or noxious odors in the receiving stream or waterway.
15. Respondent discharges process wastewater from the Facility into the City’s POTW, and therefore is an “industrial user,” as defined by 40 C.F.R. § 403.3(j).
16. The Respondent’s process wastewater is a “pollutant” as defined by Section 502(6) of the CWA.
17. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.
18. On July 1, 2006, the NDEQ issued Nebraska Pretreatment Program (“NPP”) permit number NE0132683 to C.J. Foods under the authority of Section 307 of the CWA, 33 USC § 1317.
19. Part II, Section A, Paragraph 1 of NPP Permit NE0132683 prohibits C.J. Foods from discharging pollutants in quantities that would “[i]nhibit, pass through, or interfere with the operation of performance of the POTW.”
20. On or about December 6, 2010, EPA Region 7 performed inspections of the City’s POTW and C.J. Foods.

III. Findings of Violation

Count I - Interference and Pass Through Violations

21. The facts stated in Paragraphs 7 through 20, above, are hereby incorporated by reference.
22. During the EPA inspection of C.J. Foods in December 2010, EPA observed “very intense blue-green color” in samples taken of the effluent from C.J. Foods that was discharging to the City’s POTW.

23. During the EPA inspection of the City in December 2010, EPA observed a distinct green color in the treatment units at the POTW and a distinct blue-green color in the effluent discharged from the POTW to Turkey Creek

24. The discharge of color by the City is a violation of its NPDES Permit NE0042048.

25. Respondent's discharge to the POTW, alone or in conjunction with other industrial users, caused the pass through of pollutants and/or interference of the POTW's treatment processes and operations in violation of its NPP Permit, the General Pretreatment Regulations at 40 C.F.R. § 403.5(a)(1), and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

IV. Order for Compliance

26. Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

27. Within thirty (30) days of receipt of this Order, Respondent shall submit to EPA a written Compliance Plan describing in detail how Respondent will permanently eliminate discharges to the POTW that cause pass through and/or interference at the POTW, as described in the Findings of Violation, above, and compliance with 40 C.F.R. Part 403. At a minimum, the Compliance Plan shall include:

- a. A description of any process changes Respondent proposes to undertake at the facility to eliminate color in the wastewater discharged to the POTW that will pass through the POTW;
- b. A description of wastewater treatment modifications Respondent proposes to undertake at the facility to eliminate color in the wastewater discharged to the POTW that will pass through the POTW; and
- c. A Schedule for implementation of the proposed action(s).

28. EPA will review the Compliance Plan and Schedule submitted by Respondent pursuant to Paragraph 27. After consultation with the NDEQ, the EPA will approve the Schedule or require modification and resubmission of the Compliance Plan and/or Schedule, or a portion thereof, pursuant to Paragraph 29, below. Upon approval, the Schedule shall be deemed incorporated into and become enforceable under this Order and Respondent shall immediately implement compliance measures according to the approved Schedule.

29. If required by the EPA pursuant to Paragraph 28, above, the Respondent shall within forty-five (45) days of receipt of any written comments from EPA regarding the Compliance Plan and/or Schedule, make modifications and changes to it as directed by EPA, and resubmit the

and/or Schedule, make modifications and changes to it as directed by EPA, and resubmit the Plan and/or Schedule to the EPA, with a copy to the NDEQ. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

30. Review and comment on the Compliance Plan and approval of the Schedule by the EPA does not relieve Respondent of the responsibility to comply with applicable Pretreatment standards, the Pretreatment requirements of the NPDES permit, the CWA, applicable State law, or this Order.

Reporting

31. Beginning October 28, 2011, Respondent shall submit to EPA on a quarterly basis (October 28, January 28, April 28 and July 28), until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 41, below, the following information:

- a. a description of activities completed under this Order within the reporting period, including, if applicable, a report of activities to implement the provisions of the approved Compliance Plan and Schedule; and
- b. a copy of MORs submitted to the NDEQ within the reporting period.

Certification

32. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

Submittals

33. All documents required for submittal to EPA shall be sent by certified mail, return receipt requested, to the following:

Mr. Paul Marshall, Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101

34. A copy of each submittal to EPA shall be delivered to NDEQ, as follows:

Mr. Steve Goans
NPDES Compliance Coordinator Unit Supervisor
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
Lincoln, Nebraska 68509-8922

V. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

35. Compliance with the terms of this Order for Compliance shall not relieve Respondent of liability for, or preclude EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

36. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state, and federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

37. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et. seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

38. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

39. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

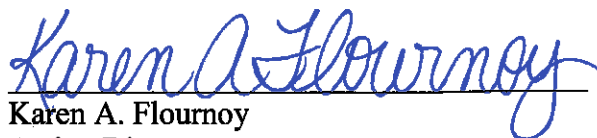
Effective Date

40. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

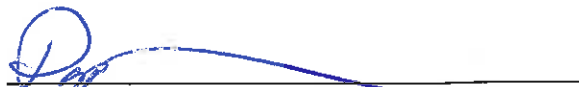
Termination

41. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 8th day of August, 2011.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

