

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2007-0017
West Point Dairy Products, L.L.C.	)	
300 Butterfield Road	)	
West Point, Nebraska, 68788	)	FINDINGS OF VIOLATION
	)	AND ORDER FOR COMPLIANCE
Respondent	)	
	)	
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). As an element of this ORDER, provision of information is required pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318. These authorities have been delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region VII.
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 CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations control the introduction of pollutants by industrial users into POTWs which may pass through or interfere with 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. A "Significant Industrial User" is defined by 40 C.F.R. § 403.3(t)(ii) as a contributing industry that has (1) a flow of 25,000 gallons or more per average workday, or (2) has an average daily flow or load greater than five percent (5%) of the flow or load carried by the POTW or (3) has significant impact on the POTW or the quality of the POTW's effluent.

7. The Nebraska Department of Environmental Quality ("NDEQ") is the state agency with the authority to administer the federal NPDES program. EPA authorized Nebraska to administer the NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), in June of 1974, and later authorized Nebraska to administer the Pretreatment Program in September of 1984. EPA retains concurrent enforcement authority under Section 309 of the CWA, 33 U.S.C. § 1319.

## **II. General Factual Allegations**

8. Respondent is incorporated in Wisconsin and doing business in the State of Nebraska.

9. Respondent does business as West Point Dairy Products, L.L.C. (hereafter, "West Point Dairy").

10. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant to this action, Respondent was (and still is) the owner and/or operator of a dairy processing facility located at 300 Butterfield Road, West Point, Nebraska, 68788.

12. The City of West Point, Nebraska (hereafter "City") owns and operates a POTW in Cuming County, 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.

13. The City's POTW is a "point source" that "discharges pollutants" into the Elkhorn River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12).
14. The Elkhorn River is considered "navigable waters" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
15. On or about May 24, 1999, NPDES Permit No. NE0023965 was issued to the City by the NDEQ pursuant to Section 402 of the Act, 33 U.S.C. § 1342 (hereafter "1999 NPDES permit").
16. The 1999 NPDES Permit contained limitations for discharges of effluent from the City's POTW to the Elkhorn River.
17. The 1999 NPDES Permit contained POTW discharge limits for, among other pollutants, total suspended solids (TSS), and carbonaceous biochemical oxygen demand (CBOD), expressed as both concentration and mass limits.
18. Respondent discharges process wastewater from its facility into the City's POTW, and therefore is an "industrial user," as defined by 40 C.F.R. § 403.3(h).
19. West Point Dairy is one of two Significant Industrial Users discharging to the City of West Point POTW in excess of 25,000 gallons of wastewater per day.
20. The Respondent's process wastewater is a "pollutant" as defined by Section 502(6) of the CWA.
21. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.
22. On or about December 8, 2000, NDEQ issued the City of West Point a Notice of Violation (NOV) based on numerous violations of the limitations of the limits for TSS and CBOD in the 1999 NPDES permit. NDEQ's NOV required the City of West Point to develop a Facility Plan and to propose a schedule and complete an upgrade of the POTW.
23. On January 3, 2001, in response to NDEQ's NOV, the City of West Point proposed a schedule for upgrade of the POTW, with a Facility Plan to be completed by May 1, 2001, and with construction of an upgrade to the POTW to begin by June 15, 2002, and construction to be completed by July 1, 2003.
24. On April 25, 2001, the City of West Point completed a Facility Plan for the POTW which evaluated the ability of the POTW to treat wastewater loadings received from industrial users and

to comply with the terms of the POTW's 1999 NPDES permit, and proposed necessary upgrades for the POTW to achieve compliance with the permit (hereafter "2001 Facility Plan").

25. The 2001 Facility Plan concluded that, as of December 1999, the average loadings to the POTW exceeded the original design capacity of the POTW by 69 percent for CBOD and by 253 percent for TSS. The 2001 Facility Plan documented that much of the mechanical equipment within the POTW had failed and/or severely deteriorated, preventing the POTW from treating loadings according to the original design capacity of the POTW. The 2001 Facility Plan concluded that loadings to the POTW were approximately double that for normal domestic sewage flows, and estimated that at least 50 percent of the loadings to the POTW were from industrial wastewater discharges to the POTW.

26. On October 13, 2003, the City of West Point requested an extension of time to complete the required upgrade of the POTW until October 1, 2005. The upgrade to the POTW was completed, and the upgraded POTW was operational, by approximately September 1, 2005.

27. Between January 2000 and September 2005, the City repeatedly violated the limitations set forth in the POTW's NPDES permit for CBOD, TSS, and ammonia ("NH<sub>3</sub>-N"), with seasonal fecal coliform limits exceeded 100 percent of the time.

28. On or about April 10-13, 2006, EPA performed an inspection of the City of West Point's POTW. The EPA's inspector observed that the plant was operating poorly during the inspection, with a condition of "nocardia" present (a filamentous bacteria growth), that results in poor settling of activated sludge. This condition resulted in a substantial amount of biological solids being discharged with the effluent. Samples taken during EPA's inspection violated the 1999 Permit's limits for TSS (for both concentration and quantity). Additionally, EPA's inspector observed the effluent discharge contained solids and heavy foam, in violation of Part IV(C) of the 1999 NPDES permit.

29. On or about December 6, 2006, NDEQ performed inspections of the City of West Point's POTW. During this inspection, NDEQ detected the presence of high concentrations of nocardia filamentous bacteria, which had previously been observed by EPA during EPA's April 2006 inspection. Nocardia is usually associated with high concentrations of oil and grease. During the NDEQ inspection, the operator of the POTW reported that the POTW had been receiving excessive amounts of Oil and Grease in effluent from Respondent West Point Dairy, with concentrations as high 737 milligrams per liter (mg/l) in October 2006. NDEQ observed that mechanical equipment at the POTW (screen scraping mechanism, lift pumps, primary clarifier and other treatment equipment) were being adversely affected by excessive Oil and Grease loadings.

30. The NDEQ inspection documented that for 2004, 2005 and 2006, CBOD loadings to the POTW exceeded the design loading of the facility for CBOD.

31. Following completion of the upgrade of the POTW (September 2005), the POTW has continued to repeatedly violate limitations of the 1999 NPDES permit for CBOD and TSS.

### **III. Findings of Violation**

#### **Count I**

#### **Interference and Pass Through Violations**

32. The facts stated in Paragraphs 8 through 31, above, are hereby incorporated by reference.

33. Pursuant to 40 C.F.R. Part 403, Respondent shall not discharge wastewater which cause the pass through of pollutants or the interference of the POTW's treatment processes and operations.

34. During the EPA and NDEQ inspections in April and December 2006, EPA and/or NDEQ observed that the POTW was adversely impacted by discharges from industrial sources, including Respondent, and the following conditions existing at the City of West Point POTW:

- a. High levels of nocardia filamentous bacteria (attributable to high loadings of Oil and Grease);
- b. Foaming in treatment units at the POTW, and pass through of foam to the Elkhorn River, in violation of Part IV(C) of the 1999 NPDES permit;
- c. Excessive wear on mechanical and treatment equipment at the POTW (attributable to high loadings from industrial users);
- d. Influent with CBOD loadings over the POTW's design capacity to treat and/or store appropriately;
- e. Discharge Monitoring reports which documented repeated violations of the limitations in the 1999 NPDES permit for the POTW.

35. Respondent, as a discharger 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.

36. The occasions of pass through and/or interference by Respondent, as described above, are violations of the City of West Point's 1999 NPDES permit and 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**

37. 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:

38. Immediately upon receipt of this Order, Respondent shall establish and implement an interim

monitoring program (Monitoring Program) that is designed to accurately determine the loadings from the Respondent's facility to the POTW. This program shall consist of at least weekly representative sampling of Respondent's discharges to the POTW. Such interim monitoring shall continue until the Monitoring Plan required by Paragraph 40, below, can be developed, approved by EPA and implemented by Respondent.

39. Within 48 hours of receipt of this Order, Respondent shall describe in writing to EPA (pursuant to Paragraph 45, below) immediate interim measures to be taken to address the pass through and interference caused by Respondent's discharge of wastewater to the POTW. Respondent shall perform such interim measures until such time as the Compliance Plan required by Paragraph 41, below, can be developed, approved by EPA, and implemented by Respondent.

40. Within fifteen (15) days of receipt of this Order, Respondent shall provide EPA a proposed Monitoring Plan to EPA for review and approval that is designed to accurately determine the loadings from the Respondent's facility to the POTW. At a minimum, the proposed Monitoring Plan shall include:

- a. The location where samples of Respondent's wastewater shall be taken;
- b. The frequency of sampling of Respondent's wastewater;
- c. A description of how the proposed sampling will be representative of fluctuations in Respondent's production and/or quality of the wastewater; and
- d. The sampling methods which will be utilized to determine the concentration and mass of pollutants in Respondent's wastewater.

41. Within fifteen (15) days of receipt of this Order, Respondent shall provide the EPA a proposed Compliance Plan, for EPA's review and approval, that shall describe in detail how Respondent will no longer cause pass through and interference at the POTW, as described in the Findings set forth above, and how Respondent shall come into compliance with 40 C.F.R. Part 403. At a minimum, the proposed Compliance Plan shall include:

- a. A description of any process changes Respondent proposes to undertake at the West Point Dairy facility to reduce loadings in the wastewater discharged to the POTW;
- b. A description of wastewater treatment modifications Respondent proposes to undertake at the West Point Dairy facility to reduce loadings in the wastewater discharged to the POTW;
- c. A description of any modifications and/or additions to the POTW that will improve the ability of the POTW to treat Respondent's wastewater;
- d. A schedule for implementation of the proposed action(s); and
- e. Submission of cost information relating to any proposed action(s).

42. Within thirty (30) days of receipt of this Order, Respondent shall provide EPA with the following information:

- a. Provide a copy of any and all effluent samples taken of Respondent West Point Dairy's discharge since January 1, 2000, whether taken by the City of West Point, or submitted to the City by a third party;
- b. Provide a copy of any and all flow measurements of Respondent West Point Dairy's discharge of wastewater to the POTW since January 1, 2000;
- c. For the period between January 1, 2000, and the present, state whether any representatives of Respondent have participated in any discussions with the City of West Point regarding the impact of Respondent's wastewater on the POTW, and/or the impact of Respondent's wastewater on the ability of the POTW to comply with its NPDES permit. If such discussions occurred, provide the date and participants in such discussions, and a written summary of such discussions;
- d. Provide a copy of any and all documentation of communications and/or meetings between representatives of the City of West Point and Respondent West Point Dairy (including meeting notes and/or memorandum) that discuss or relate to any discussions of any actual or potential effects that Respondent West Point Dairy's wastewater discharge had, or is having, on the POTW;
- e. For the period between January 2000 and the present, provide a copy of any and all past and present studies, reports, memoranda, correspondence, or other documentation that describes or relates to the actual or any considered treatment of Respondent West Point Dairy's effluent, or the POTW's influent and/or effluent;
- f. State whether Respondent West Point Dairy ever received a copy of the 2001 Facility Plan, prepared by the City of West Point in response to the NDEQ's December 2000 Notice of Violation;
- g. For the period between January 1, 2000, and the present, provide a summary by month of any and all fees (or surcharges) levied against Respondent West Point Dairy by the City of West Point for the treatment of Respondent's wastewater and provide an explanation of the basis for the calculations behind such fees (or surcharges);
- h. Provide a copy of any and all past and/or present agreements between the City of West Point and Respondent West Point Dairy for the treatment of wastewater;
- i. For each year between January 1, 2000, and the present, provide a summary of monthly production, by general product type, at Respondent's West Point Dairy facility; and
- j. For the period between January 1, 2000, and the present, provide a description of any and all expansions of the production capacity at Respondent's West Point Dairy Facility.

43. Beginning with the month following the effective date of this Order, Respondent shall submit to EPA bi-monthly (every other month) progress reports, which shall be submitted for each month on or before the tenth day of the month following the reporting period. The bi-monthly progress reports shall the following information:

- a. Copies of the analytical results for all sampling required pursuant to this Order;
- b. A written summary of all other activities undertaken in compliance with this Order;  
and
- c. A written summary of any discharges to the POTW which had the potential to cause the pass through of pollutants and/or interference of the POTW's treatment processes and operations.

#### **EPA Review and Approval of Required Submittals**

44. EPA will review all proposed submittals requiring EPA approval (Monitoring Plan and Compliance Plan), and notify Respondent in writing of EPA's approval, disapproval or modification of the submittal, or any part thereof. Within thirty (30) days of receipt of EPA's comments pertaining to any submittal, Respondent shall amend such submittal, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submittal, it may modify and approve the same in accordance with its comments. In the event of such modification, EPA will notify Respondent of the modification. Upon receipt of EPA's approval or notice of modification, Respondent shall commence work and implement any approved submittal (Monitoring Plan and Compliance Plan) in accordance with the schedule and provisions contained therein. EPA approved submittals shall be deemed incorporated into and part of this Order.

45. All documents required for submittal to EPA (including the Monitoring Plan and Compliance Plan and other documents required to be submitted pursuant to this Order) shall be hand delivered or 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 5<sup>th</sup> Street  
Kansas City, KS 66101



## **V. General Provisions**

### **Effect of Compliance with the Terms of This Order for Compliance**

46. 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.
47. 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.
48. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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**

49. 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**

50. 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.

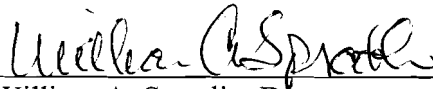
### **Effective Date**

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

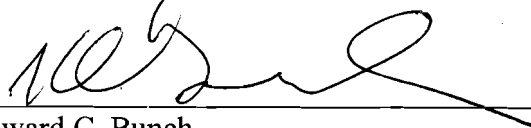
**Termination**

52. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



William A. Spratlin, Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101



Howard C. Bunch  
Sr. Assistant Regional Counsel  
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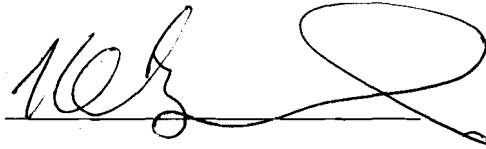
CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance Regional Hearing Clerk, United States Environmental Protection Agency, 901 N. 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Mr. Rob Jackson, Plant Manager  
West Point Dairy Products, L.L.C.  
300 Butterfield Road  
West Point, Nebraska, 68788

12/19/06  
Date

A handwritten signature in black ink, appearing to read 'Rob Jackson', written over a horizontal line.