

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH 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-07-2011-0090

GRAIN PROCESSING CORPORATION,)

) FINDINGS OF VIOLATION and
) ORDER FOR COMPLIANCE

Respondent,)

Proceedings under Section 309(a)(3)
of the Clean Water Act,
33 U.S.C. § 1319(a)

Preliminary Statement

1. The following FINDINGS OF VIOLATION are made and the 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"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

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

Statutory and Regulatory Framework

3. 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 only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

4. 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.

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

6. 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, the implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Findings of Fact

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

8. Respondent, Grain Processing Corporation, is a manufacturer of 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.

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

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

11. 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).

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

13. 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.

14. 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.

15. 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

16. The facts stated in Paragraphs 7 through 15, above, are herein incorporated.

Count I

17. 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.

18. The EPA inspection referenced in Paragraph 14, above, revealed that Respondent failed 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.

19. 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.

20. The EPA inspection referenced in Paragraph 14, above, revealed that Respondent failed 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.

21. Respondent's failure to comply with the monitoring and reporting requirements is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II

22. 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.

23. The EPA inspection referenced in Paragraph 14, above, revealed that Respondent failed to maintain all facilities and control systems in good working order. The EPA inspector observed many portions of the facility that were not in good working order during the inspection due to lack of maintenance, including air distribution equipment in the three aeration basins that was not maintained to obtain uniform aeration; excessive build-up of algae on the weirs on the aeration basins and clarifiers; solids floating over the entire surface of the second clarifier; broken and rusted weirs on the clarifiers; a broken agitator on anaerobic digester #1; a starch spill near Tank Farm #1; a leak near Drier House #1; and malfunctioning flow meters.

24. Respondent's failure to maintain all facilities and control systems in good working order is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count III

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. The EPA inspection referenced in Paragraph 14, above, revealed that Respondent exceeded the 1998 NPDES permit 30-day average and daily maximum limitations for BOD₅ and TSS, as well as the limitations for temperature and pH, including the following:

- a. BOD₅
 - i. Respondent exceeded the 30-day average mass permit limitation for BOD₅ during the months of January and October 2010;
 - ii. Respondent exceeded the daily maximum mass permit limitation for BOD₅ during the months of October 2007, February and July 2009, and April 2011;
- b. TSS
 - i. Respondent exceeded the 30-day average mass permit limitation for TSS during the months of May 2009, January 2010, and August 2010;
 - ii. Respondent exceeded the daily maximum mass permit limitation for TSS during the months of February and May 2009, March 2010, and February 2011;
- c. temperature
 - i. Respondent exceeded the daily maximum permit limitation for temperature at Outfall 002 during the month of November 2010;
 - ii. Respondent exceeded the daily maximum permit limitation for temperature at Outfall 003 during the months of November 2008, January, February, April, and November 2010, and March and May 2011; and

d. pH

- i. Respondent exceeded the permit limitation for pH at Outfall 001 during the month of February 2010, at Outfall 002 during the month November 2010, at Outfall 004 during the month of January 2010, and at Outfall 005 during the month of August 2006.

27. Respondent's failure to comply with the effluent limitations is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below:

28. Within 30 days of the effective date of the Order, Respondent shall identify and thereafter implement all necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its 1998 NPDES permit.

29. *Reporting to EPA and IDNR.* Respondent shall submit to EPA, with a copy to IDNR, the following documentation describing the actions Respondent has taken to comply with the terms of this Order:

a. *Operations and Maintenance*

- i. Within 60 days of the effective date of the Order, Respondent shall submit completed work orders and signed receipts documenting completion of the necessary facility repairs noted in Paragraph 23;
- ii. Within 60 days of the effective date of the Order, Respondent shall submit to EPA, with a copy to IDNR, a comprehensive written plan for maintaining all facilities and control systems in good working order. This Operations and Maintenance Plan shall describe the good housekeeping measures Respondent will take, and must document the processes Respondent will follow to ensure that future operations and maintenance issues are either prevented, or identified and addressed immediately.

- b. *Effluent Limitations.* Within 60 days of the effective date of the Order, Respondent shall submit to EPA, with a copy to IDNR, a report describing the actions Respondent has taken to achieve compliance with its permitted effluent limitations. The report shall address the specific actions Respondent has taken to

correct the effluent violations, an explanation of why such actions are sufficient to ensure compliance with the effluent limitations, and actions taken to prevent recurrence of such violations.

- c. *Monitoring.* Beginning October 15, 2011, and continuing until this Order is terminated, Respondent shall submit to EPA copies of the monthly monitoring reports that are required to be sent to IDNR. The monthly monitoring reports are due to EPA on a quarterly basis: the reports for January-March are due on April 15; those for April-June, on July 15; those for July-September, on October 15; and those for October-December, on January 15.

30. All submissions by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that Grain Processing Corporation has complied with all the applicable requirements of the Order for Compliance. I also 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 violations.

31. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Mike Boeglin
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

32. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

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

General Provisions

Effect of Compliance with the Terms of this Order

33. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial 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.

34. 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. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), 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 CWA for any violation whatsoever.

Access and Requests for Information

35. 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

36. 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.

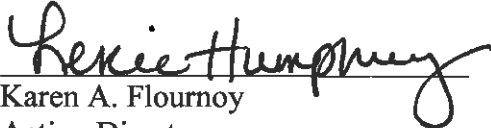
Effective Date

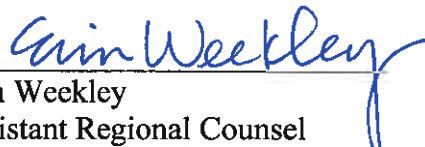
37. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

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

Issued this 29th day of July, 2011.


for Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7


Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

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 Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

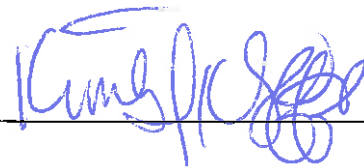
Jay S. Huff
Registered Agent, Grain Processing Corporation
1600 Oregon Street
Muscatine, Iowa 52761,

and by first class mail to:

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

JUL 29 2011

Date



A handwritten signature in blue ink, appearing to read 'Jay S. Huff', is written over a horizontal line.