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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2013-0108
)	
THE AMALGAMATED SUGAR)	
COMPANY LLC,)	CONSENT AGREEMENT AND
Boise, Idaho)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and The Amalgamated Sugar Company LLC (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, inter alia, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.1.1 The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7),(12), 33 U.S.C. § 1362(7),(12).

3.1.2 The CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(16), 33 U.S.C. § 1362(14).

3.1.3 The CWA defines stormwater discharge associated with industrial activity (“industrial stormwater”) to include the discharge from any conveyance which is used for

collecting and processing or raw materials storage areas at an industrial plant. Industrial stormwater is a type of pollutant. CWA § 402(p), 33 U.S.C. § 1342(p); 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(b)(14).

3.2. Respondent is a limited liability company organized under the laws of the State of Delaware, and a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.3. Respondent’s facility (“Facility”) is located in Paul, Idaho, where it manufactures sugar for human consumption from sugar beets. Stormwater generated primarily from areas of the facility where sugar beets are stored, and from the roadways used by the trucks which enter and exit the facility, is temporarily stored in a containment area prior to land application.

3.3.1. Respondent’s containment area can contain up to 1,000,000 gallons of stormwater, from which pollutants may be discharged under certain circumstances, and is a point source for purposes of the CWA. CWA § 502(14), 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.

3.3.2. Establishments primarily engaged in manufacturing sugar from sugar beets fall specifically within Standard Industrial Classification (SIC) code 2063, and more generally within Manufacturing Major Group 20, Food and Kindred Products.

3.3.3 Establishments within Manufacturing Major Group 20, Food and Kindred Products, are defined as engaging in industrial activity. 40 C.F.R. § 122.26(b)(14)(xi).

3.3.4. The CWA defines stormwater associated with industrial activity (“industrial stormwater”) as a type of pollutant. 40 C.F.R. § 122.26(b)(14)

3.4. EPA alleges that on December 5, 2012, Respondent released approximately 4,000 gallons of industrial stormwater from its containment area into the adjacent drainage/irrigation canal called Main Drain.

3.5. Main Drain always has water flowing in it and flows into the Snake River, approximately 18 miles downriver from the Facility. The Snake River, a tributary to the

Columbia River, is a “navigable water” and “waters of the United States,” and is subject to the jurisdiction of the Clean Water Act. CWA § 311, 33 U.S.C. § 1321; CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. §§ 110.1, 232.2.

3.6. On November 16, 1990, the Administrator of EPA promulgated regulations for stormwater permit applications, under which Respondent was and is required to apply for and obtain a NPDES permit before discharging industrial stormwater from the Facility into waters of the United States. 40 C.F.R. §§ 122.21, 122.26, 122.28.

3.7. EPA alleges that on December 5, 2012, Respondent did not have a NPDES permit to discharge pollutants into waters of the United States.

3.8. **Violation:** EPA alleges that Respondent violated Section 301(a) of the CWA, as Respondent’s December 5, 2012 discharge of pollutants from a point source into navigable waters of the United States was not authorized by a NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a).

3.9. EPA alleges that Respondent is liable for administrative penalties up to \$16,000 for the day during which this alleged violation occurred. CWA § 309(g), 33 U.S.C. § 1319(g); 40 C.F.R. Part 19.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in this CAFO. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.2. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$7,500.00.

4.3. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.2 within thirty (30) days of the effective date of the Final Order.

4.4. Payment under this CAFO must be made by cashier's check, certified check, or Automated Clearinghouse. Checks shall be payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.5. Respondent shall send notice of such payment, including a photocopy of the check described in Paragraph 4.4, to the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chae Park, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.6. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.3, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.2, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.7. The penalty described in Paragraph 4.2, including any additional costs incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.8. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.9. Except as described in Subparagraph 4.6.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.10. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.11. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.12. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

6/18/13

FOR RESPONDENT:



Signature

Print Name: Joe Heff

Title: Vice President & Chief Operating Officer

DATED:

7/16/2013

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the

opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 25th day of July, 2013.


THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: The Amalgamated Sugar Company, LLC; Docket No. CWA-10-2013-0108**, was filed, and served as follows, on the signature date below.

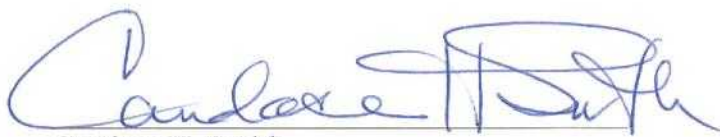
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

The Amalgamated Sugar Company LLC
Attn: John McCreedy
1951 S. Saturn Way, Suite 100
Boise, ID 83709

25th of July
Dated
2013


Candace H. Smith
Regional Hearing Clerk
EPA Region 10