

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
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)
)
) Docket No. CWA-07-2004-0190
)
) M.G. Waldbaum Company)
) 105 Main Street)
) Wakefield, Nebraska 68784)
) Respondent)
) FINDINGS OF VIOLATION
) 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), as delegated by the Administrator to the Regional Administrator, the EPA Region VII, and further delegated to the Director, Water, Wetlands, and Pesticides Division, the 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), the 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. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency with the authority to administer the federal NPDES program. The 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. The EPA retains concurrent enforcement authority under Sections 309 of the CWA, 33 U.S.C. §§ 1319.

II. General Factual Allegations

7. Respondent is incorporated and doing business in the State of Nebraska
8. Respondent does business as M.G. Waldbaum and Michael Foods (hereinafter, “Waldbaum”).
9. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
10. At all times relevant, Respondent was, and still is, the owner and/or operator of an egg processing facility located at 407 Main Street, Wakefield, Nebraska (the “Facility”).
11. The City of Wakefield, Nebraska (hereafter “City”) owns and operates a POTW in Dixon County, Nebraska. The City’s POTW includes a wastewater treatment plant and sewage collection system, which receives wastewater from various domestic and non-domestic sources and one industry, the Respondent.
12. The City’s POTW is a “point source” that “discharges pollutants” into Logan Creek, as these terms are defined by Section 502(14, 12) of the CWA, respectively, 33 U.S.C. § 1362(14, 12).

13. Logan Creek is considered “navigable waters” of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
14. On or about March 23, 2001, NPDES Permit No. NE0049018 was issued to the City by the NDEQ pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
15. On or about February 14, 2001, NPDES/NPP Permit No. NE0113735 was issued to M.G. Waldbaum Company by the NDEQ pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
16. The City NPDES Permit NE0049018 contains limitations for discharges of effluent from the City’s POTW to Logan Creek.
17. The Waldbaum Permit NE0113735 contains sampling, monitoring and other requirements for its process wastewater via the Wakefield POTW to Logan Creek.
18. The City Permit NE0049018 contains POTW discharge limits for, among other pollutants, total suspended solids (TSS), and carbonaceous biochemical oxygen demand (CBOD), expressed as mass in units of kilograms per day. The TSS and CBOD 30-day average limits are established in the Permit at 200.9 kg/day and 62.8 kg/day.
19. 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(h).
20. Waldbaum is the only industrial user discharging to the City of Wakefield POTW.
21. The Respondent’s process wastewater is a “pollutant” as defined by Section 502(6) of the CWA.
22. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.
23. On or about April 7, 2004, the EPA performed an inspection of the City of Wakefield’s POTW.
24. On or about March 30, 2004, April 15, 2004 and April 27, 2004, NDEQ performed inspections of the City of Wakefield’s POTW.

III. Findings of Violation

Count I

Interference and Pass Through Violations

25. The facts stated in Paragraphs 5 through 24 above are incorporated herein by reference.

26. Under NPDES/NPP Permit NE0113735 and 40 C.F.R. Part 403, Respondent shall not discharge pollutants which cause interference or process upset at the City's treatment facility.

27. The City violated the limits of the Permit in 2003 on no less than the following occasions, as indicated in the table below.

Table of Numeric Violations- City of Wakefield, NE								
Date	CBOD				TSS			
	Mass		Concentration		Mass		Concentration	
	30d avg	7d avg	30d avg	7d avg	30d avg	D max	30d avg	D max
	62.8 kg/d	100.4 kg/d	25 mg/l	40 mg/l	200.9 kg/d	301.3 kg/d	80 mg/l	120 mg/l
May, 2003	119	224			364	657		
June, 2003	285	285	50.3	50.3	210.9	548		121
Oct, 2003	94.3	105.6			283.1	432.4		
Nov, 2003	152.4				278.5			

28. Additionally, during the inspections in March and April 2004, the EPA and/or NDEQ observed the following conditions existing at the City of Wakefield Treatment Facility:

- i. Motors for Industrial Lift Station had ceased operating;
- ii. Industrial Lagoons, 3,4,5,6,7,8, and 9 were being operated without or with negligible freeboard;
- iii. Industrial Lagoons, 3,4,5,6, and 7 had breached their respective dikes;
- iv. Industrial influent, ranging from 600,000-900,000 g.p.d., is grossly over the City's capacity to treat and store appropriately.

29. Respondent, as sole discharger to the industrial lagoons, caused the pass through of pollutants and the interference of the POTW's treatment processes and operations.

30. The occasions of pass through and/or interference by Respondent described above, are violations of the Respondent's 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

31. Based on the foregoing FINDINGS 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:

32. Within 48 hours Respondent will propose to the EPA and NDEQ interim measures to be taken to address the pass thru and interference until such time as the plan described below can be developed, approved and implemented.

33. Within fifteen days of receipt of this Order, Respondent shall provide the EPA and NDEQ with a proposal describing in detail how Respondent will no longer cause pass through and interference at the POTW as described in the violations noted herein and come into compliance with 40 C.F.R. Part 403.

a. At a minimum, the proposal shall include:

- i. A description of the process changes Respondent shall undertake at the Waldbaum facility including any process which involves using partially treated wastewater for land irrigation;
- ii. A description of treatment modifications Respondent shall undertake at the Waldbaum facility including any modification and/or addition to the POTW involving the treatment of wastewater;
- iii. A schedule for implementation of the proposed action;
- iv. Submission of cost information relating to any proposed action.

b. If the EPA approves the proposal, then the proposal shall be implemented according to the schedule in the approved proposal.

c. If the EPA disapproves the proposal, the Respondent shall address the comments and resubmit the plan for review within thirty days of receipt of the EPA's disapproval.

d. Upon re-submission, the EPA, in its sole discretion, may either approve the plan, or if the EPA determines that the plan does not adequately address the comments provided by the EPA, then the EPA may unilaterally modify the plan. The EPA will provide Respondent with a copy of the modified plan and Respondent shall implement the modified plan.

e. Upon receipt of the EPA's approval of the plan submitted under Paragraph 33a. above, and modified and resubmitted (if required) under Paragraph 33c. and d. above, the approved plan shall be incorporated into and become enforceable under this Order. Respondent shall implement the provisions of the plan, as approved.

Lincoln, Nebraska 68509

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May 11 2004
Date

Debby White