

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)

Formosa Food Company, Inc.,)

Respondent.)

Proceeding under Section 308(a) and)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §§ 1318(a) and 1319(a)(3))

) Docket No. CWA-07-2011-0113

) FINDINGS OF VIOLATION
) AND ORDER FOR COMPLIANCE

I. Statutory Authority

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE ("Order") 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 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, Section 307 of the Act, 33 U.S.C. § 1317, and a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 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. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Iowa pursuant to Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and the implementing regulations. The EPA retains concurrent enforcement authority with authorized state NPDES and Pretreatment programs under Section 309 of the CWA, 33 U.S.C. § 1319.

II. General Factual and Legal Allegations

4. The city of Hull, Iowa (hereafter "City") owns and operates a POTW in Sioux County, Iowa. The City's POTW includes a wastewater treatment plant ("WWTP") and sewage collection system, which receive wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent's facility.

5. The POTW discharges to an unnamed tributary of Burr Oak Creek and Rock River.

6. The POTW is a "point source" that "discharges pollutants" to "navigable waters" of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

7. Formosa Food Company, Inc. ("Formosa Food" or "Respondent"), is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), incorporated in the State of Iowa, and registered to do business in the state of Iowa. Respondent's registered agent for service in Iowa is Wang Tsai Shih, Formosa Food Company, Inc., 540 North Main Avenue, Sioux Center, Iowa 51250.

8. At all times relevant, Respondent owned and/or operated a food processing facility located at 810 Black Forest Road, Hull, Iowa 51239 (the "facility").

9. Respondent discharges wastewater from its facility into the City's POTW, and is therefore an "Industrial User" or "IU" as defined by 40 C.F.R. § 403.3(j).

10. Respondent is, therefore, subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

11. As an Industrial User, Respondent is subject to General Pretreatment Regulations at 40 C.F.R. Part 403.

12. On or about May 14, 2001, the IDNR issued NPDES Permit IA0020991 to the City pursuant to Section 402 of the Act, 33 U.S.C. § 1342, which was scheduled to expire on May 13, 2006. The City submitted an application for renewal of its permit, and the permit has been administratively extended pending reissuance by IDNR.

13. The City's NPDES Permit contains conditions and limitations for discharges of effluent from, and operation of, its POTW.

14. Respondent's process wastewater discharged to the POTW contains "pollutants" as defined by Section 502(6) of the CWA, including, but not limited to, five-day carbonaceous biochemical oxygen demand ("CBOD₅"), total suspended solids ("TSS"), total Kjeldahl nitrogen ("TKN"), pH, and oil and grease ("O&G").

15. On or about May 1, 1996, the City entered into a Treatment Agreement with Formosa Food, which included limitations and conditions for discharges from Formosa Food's facility to the POTW pursuant to provisions of the CWA, 33 U.S.C. § 1317. The 1996 Treatment Agreement limitations were reviewed and approved by IDNR, and thereafter incorporated into NPDES Permit IA0020991, which contains both final effluent limitations for the City and Pretreatment limits for Formosa Food's IU discharge to the POTW based on the provisions of the Treatment Agreement.

16. On or about February 20, 2008, the City entered into a new Treatment Agreement with Formosa Food. As of the date of this Order, the terms of the 2008 Treatment Agreement have not been incorporated into the NPDES permit.

17. The 1996 Treatment Agreement and NPDES Permit Number IA0020991 establish "Industrial Contributor" Pretreatment limitations and conditions and monitoring for Formosa Food and reporting requirements for the City, including, but not limited to, effluent limitations for CBOD₅, TSS, TKN, pH, and O&G. Limitations and conditions for Formosa Food in the Treatment Agreement and permit include, but are not limited to:

- a) CBOD₅ – 30-day average and daily maximum limitations of 125 and 150 pounds per day ("lbs/d"), respectively, with a 24-hour composite samples to be taken no less frequently than once every three (3) months.
- b) TSS – 30-day average and daily maximum limitations of 20 and 30 lbs/d, respectively, with a 24-hour composite samples to be taken no less frequently than once every three (3) months.
- c) TKN – 30-day average and daily maximum limitation of 20 and 30 lbs/d, respectively, with a 24-hour composite samples to be taken no less frequently than once per week.
- d) pH – minimum and maximum values of six to nine standard units, respectively, with a grab samples to be taken no less frequently than once per week.
- e) O&G – 30-day average and daily maximum limitations of 450 and 600 milligrams per liter ("mg/L"), respectively, with a grab samples to be taken no less frequently than once per month.
- f) Monitoring and Reporting Requirements
 - i. samples and measurements are to be representative of the volume and nature of the monitored wastewater;
 - ii. analytical and sampling methods specified in 40 C.F.R. Part 136 or other methods approved in writing by the IDNR are to be used;
 - iii. effluent (waste) from Formosa Food must be monitored for compliance prior to discharge to the municipal collection system; and

- iv. the 24-hour total effluent flow shall be measured in million gallons per day (MGD) seven days per week.

18. Treatment Agreement limits and conditions for Formosa Food incorporated into the Pretreatment provisions of NPDES Permit IA0020991 are Pretreatment requirements as defined by 40 C.F.R. § 403.3(t) and Pretreatment Standards pursuant to 40 C.F.R. § 403.5.

19. Pretreatment Standards established at 40 C.F.R. Part 403 have been promulgated under the authority of Section 307 of the CWA, 33 U.S.C. § 1317, and contain a general prohibition, at 40 C.F.R. § 403.5(a), against the introduction into a POTW of any pollutant or pollutants that cause interference or pass-through, as those terms are defined at 40 C.F.R. § 403.3(k) and (p), respectively; specific prohibitions as described in 40 C.F.R. § 403.5(b), against the introduction of certain pollutants into a POTW; and specific limits developed by or for a POTW pursuant to 40 C.F.R. § 403.5(a), to implement the prohibitions in 40 C.F.R. § 403.5(a) and (b).

20. On or about November 30 through December 3, 2009, EPA performed an inspection of the City's POTW and of discharges from Formosa Food to the POTW ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

21. During the Inspection, the EPA inspector reviewed documents, including Monthly Operating Reports ("MORs") for the City and Formosa Food, observed the City's facility and the Formosa Food facility, observed sampling and analysis techniques and practices, and collected effluent samples, which were later analyzed.

22. Following the Inspection, the City submitted information to the EPA inspector regarding actions the City had taken and planned to take to achieve compliance with its NPDES Permit.

23. On or about August 4, 2010, EPA issued a request for information to the City pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, the City's regulation of Industrial Users, including discharges from the Formosa Food's facility to the POTW. The City submitted its response to the information request by letter and Statement of Certification dated September 2, 2010, hereafter referred to as the "City's Information Request Response."

24. On or about August 4, 2010, EPA issued a request for information to Formosa Food pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, Formosa Food's production, wastewater processes and discharges to the City's POTW. The Respondent submitted its response to the information request by letter and Statement of Certification dated September 3, 2010, hereafter referred to as the "Formosa Food's Information Request Response."

25. Information from the EPA Inspection, the City's submission following the Inspection, the City's Information Request Response, and Formosa Food's Information Request Response indicate, in part, that Formosa Food:

- a) has been working with one or more consultants to develop and implement improvements to its operations and Pretreatment processes to achieve compliance with its Treatment Agreement and Pretreatment requirements in NPDES Permit IA0020991; and
- b) has alleged the City practiced inconsistent, and at times inappropriate, sampling procedures for monitoring the discharges from Formosa Food to the POTW.

III. Findings of Violation

26. The facts stated in Paragraphs 4 through 25 above, are hereby incorporated by reference.

Pretreatment Effluent Limit Violations

27. Based on information and data collected during the Inspection and provided in the City's and Respondent's Information Request Responses, from January 2010 through at least July 2010 Respondent violated 30-day average limitations set forth in its 1996 Treatment Agreement and NPDES Permit Number IA0020991, as identified in Appendix A of this Order, and summarized below:

January:	CBOD ₅ , TSS, and TKN
March:	CBOD ₅ , TSS, and TKN
April:	CBOD ₅ , TSS, and TKN
May:	CBOD ₅ , TSS, and TKN
June:	CBOD ₅ , TSS, and TKN
July:	TKN

28. Based on information and data collected during the Inspection and provided in the City's and Respondent's Information Request Responses, from January 2010 through at least July 2010 Respondent violated daily maximum or minimum limitations set forth in its 1996 Treatment Agreement and NPDES Permit Number IA0020991, as identified in Appendix A of this Order, and summarized below:

- a) 26 violations of the daily maximum limitation for CBOD₅;
- b) 25 violations of the daily maximum limitation for TSS;
- c) 24 violations of the daily maximum limitation for TKN;
- d) 2 violations of the daily maximum limitation for O&G; and
- e) 10 violations of the daily minimum limitation for pH.

29. Respondent's discharges of CBOD₅, TSS, TKN, O&G and pH in excess of the NPDES Permit 30-day average, daily maximum and daily minimum limitations are violations of the Respondent's Treatment Agreement, NPDES Permit Number IA0020991, and the General Pretreatment Regulations at 40 C.F.R. § 403, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

IV. Order for Compliance

30. 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) and Section 308 of the Act, 33 U.S.C. § 1318, Respondent is hereby ORDERED AS FOLLOWS:

31. Within forty-five (45) calendar days of receipt of this Order, Respondent shall provide to EPA, with a copy to IDNR, a written Compliance Report, Plans and Schedules describing in detail how Respondent has achieved or plans to achieve compliance with NPDES Permit IA0020991 and correct the violations described in the Findings of Violation noted herein. At a minimum, the proposal shall include:

- a) the name of a contact person for purposes of communications regarding this Order;
- b) with regard to compliance with Pretreatment limitations:
 - i. an explanation, with supporting documentation, of all actions taken from July 2010 to date to comply with the Pretreatment limitations for Formosa Foods, including but not limited to CBOD₅, TSS, TKN, O&G and pH; and
 - ii. a detailed Plan and Schedule for implementing any process changes, construction or other actions to achieve compliance with all Pretreatment limitations.

32. Within forty-five (45) days of receipt of this Order, Respondent shall provide EPA a proposed Monitoring Plan for EPA review and approval that is designed to comply with the requirements of the Treatment Agreement and the Pretreatment limitations in NPDES Permit IA0020991 to accurately measure discharges from Formosa Food to the POTW. Until such time as monitoring and reporting of Formosa Food's compliance with Pretreatment limitations is confirmed by EPA to be reconciled between monitoring performed by Formosa Food and monitoring performed by the City, monitoring performed by Formosa Food shall be in addition to monitoring performed by the City. At a minimum, the proposed Monitoring Plan shall comply with all terms of the Treatment Agreement and NPDES Permit, and shall include:

- a) monitoring:
 - i. the location(s) where samples of Formosa Food's wastewater shall be taken;
 - ii. the parameters, including flow and pollutants, to be monitored, as specified in the NPDES Permit and Treatment Agreement;
 - iii. the frequency of sampling for flow and each pollutant parameter;
 - iv. a description of how the proposed sampling will be representative of fluctuations in Formosa Food's production and/or quality of the wastewater;
 - v. the sampling and analysis methods which will be utilized to determine compliance with each measured parameter; and

- vi. a quality control plan, including the qualifications of the person(s) performing and/or supervising the monitoring to ensure accurate and consistent monitoring, analysis and reporting.

b) reporting:

- i. the results of all sampling and analysis within a calendar month shall be provided to the City as soon as possible following the end of the month, but no later than the fifteenth (15) day of the month to facilitate inclusion of Formosa Food's sampling results in the City's monthly MOR submittals to the IDNR; and
- ii. upon request, Respondent shall provide documentation, including chain of custody information and laboratory analysis reports to the City.

33. EPA will review the Plans and Schedules submitted by Respondent pursuant to Paragraphs 31 and 32, above. After consultation with IDNR, the EPA shall approve the Schedules contained within the Compliance Plans and Schedules and the Monitoring Plan, or require modification and resubmission of such Plans and/or Schedules, or a portion thereof, pursuant to Paragraph 34, below. Upon approval, the Schedule for the Compliance Plans and Schedules and the Monitoring Plan shall be deemed incorporated into and become enforceable under this Order and Respondent shall immediately implement compliance measures, as approved.

34. If required by the EPA pursuant to Paragraph 29, above, the Respondent shall within forty-five (45) days of receipt of any written comments from EPA regarding either a Plan 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 IDNR. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

35. Review, comment or approval of a Plan or Schedule by the EPA does not relieve Respondent of the responsibility to comply with its Treatment Agreement, the Pretreatment requirements of the NPDES permit, the CWA, applicable state law, or this Order.

Quarterly Reporting

36. Beginning January 28, 2012, Respondent shall submit information and reports regarding actions taken in response to this Order to EPA on a quarterly basis (January 28, April 28, July 28 and October 28), with a copy to IDNR, until Respondent is notified by the EPA that the reporting may cease or that this Order is terminated pursuant to Paragraph 46, below, as follows:

- a) for the Compliance Plans and Schedules, a description, with dates, of activities completed under this Order within the reporting period, the results achieved, and a brief list of the activities planned for the next reporting quarter; and

- b) for the Monitoring Plan, a table clearly showing the date and location of each sample collected and the result of the sample. In addition, Respondent must maintain and have available for review, upon request, supporting documentation that identifies the sample collection and preservation process, the chain of custody information, and a copy of the analytical result for each sample required pursuant to this Order.

Certification

37. 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

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

Mr. Robert Bryant
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

39. All documents required for submittal to IDNR shall be hand delivered or sent by certified mail, return receipt requested, to the following:

Dennis Ostwinkle, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

Ken Hessenius, Supervisor
IDNR Field Office #2
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301

V. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

40. Compliance with the terms of this Order 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.

41. 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.

42. 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 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

43. 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

44. 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

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

Termination

46. 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 26th day of October, 2011.



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



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

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 to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North 5th 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:

Wang Tsai Shih
Registered Agent
Formosa Food Company, Inc.
540 North Main Avenue
Sioux Center, Iowa 51250.

I certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Eric Shih, Owner
Formosa Food Company, Inc.
810 Black Forrest Road
Hull, Iowa 51239

Dennis Ostwinkle, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

Ken Hessenius, Supervisor
IDNR Field Office #2
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301

OCT 27 2011

Date


