

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY JUN 29 PM 3:27

BEFORE THE ADMINISTRATOR ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)
)
IOWA TURKEY GROWERS COOPERATIVE)
d/b/a WEST LIBERTY FOODS)
West Liberty, Iowa) Docket. No. CWA-07-2001-0053
)
Respondent) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

I. PRELIMINARY STATEMENT

1. The following 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"), 33 U.S.C. § 1319(a)(3), as 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. The Respondent is Iowa Turkey Growers Cooperative.

II. STATUTORY AND REGULATORY BACKGROUND

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the 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 CWA, 33 U.S.C. §§ 1317 and 1342. Section 402 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. Section 307 of the CWA, in pertinent part, authorizes the EPA to establish pretreatment standards for introduction of pollutants into publicly owned treatment works ("POTW").

4. 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 into POTWs which may pass through or interfere with treatment processes of such treatment works or which may contaminate sewage sludge.

5. 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.

6. 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.

7. 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 Agreement dated August 10, 1978. The IDNR is also the state agency with the authority to administer the Pretreatment program in Iowa pursuant to Section 402 of the CWA, the implementing regulations, and a Memorandum of Agreement dated June 6, 1981. As such, IDNR is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

8. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA maintains concurrent enforcement authority with delegated states, including Iowa, for violations of state issued NPDES permits and Pretreatment program requirements.

III. FINDINGS OF FACT

9. Respondent is incorporated in the State of Iowa as a cooperative association.
10. Respondent does business as West Liberty Foods.
11. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant, Respondent was, and still is, the owner and/or operator of a turkey processing facility located at 207 W. 2nd Street, West Liberty, Muscatine County, Iowa 52776 (the "Facility").

13. The City of West Liberty, Iowa (hereafter "City") owns and operates a POTW in Muscatine County, Iowa. The City's POTW includes a wastewater treatment plant and sewage collection system, which receives wastewater from various domestic and non-domestic sources.

14. The City's POTW is a "point source" that "discharges pollutants" into Wapsinonoc Creek, as these terms are defined by Section 502(14, 12) of the CWA, respectively, 33 U.S.C. § 1362(14, 12).

15. Wapsinonoc Creek is a tributary of the Cedar River, which is a tributary of the Iowa River, which in turn is a tributary of the Mississippi River.

16. Wapsinonoc Creek is considered "navigable waters" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. On or about October 2, 1991, NPDES Permit EPA No. IA0031691 (the "Permit") was issued to the City by IDNR pursuant to the authority of Section 402 of the CWA, 33 U.S.C. § 1342.

18. The Permit contains limitations for discharges of effluent from the City's POTW to Wapsinonoc Creek.

19. According to its terms, the date of expiration of the Permit is October 1, 1996. However, the Permit has been administratively extended under Iowa law, 567 Iowa Administrative Code (IAC) 64.8 (455B), based upon the City's April 4, 1996 application for permit reissuance, until such time that IDNR reissues the Permit, which it has yet to do.

20. The Permit contains POTW discharge limits for, among other pollutants, total suspended solids (TSS), expressed as mass in units of pounds per day. The TSS 30-day average limit is established in the Permit at 343 lbs/day.

21. 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).

22. The Facility's process wastewater is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. Respondent is subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

24. The Permit contains limits established by IDNR for the Facility's wastewater discharge into the POTW.

25. The limits upon the Facility's wastewater discharge into the POTW, contained in the Permit, are based on the POTW's ability to adequately treat pollutants before discharge into Wapsinonoc Creek. As such, these limits constitute "pretreatment standards", as defined by 40 C.F.R. 403.3(j).

26. The Permit limits the Facility's discharge of TSS to 3000 lbs/day as a 30-day average, and 4500 lbs/day as a daily maximum.

27. The Permit limits the Facility's discharge of biochemical oxygen demand (BOD) to 4400 lbs/day as a 30-day average, and 6600 lbs/day as a daily maximum.

28. According to the City's April 4, 1996 application for reissuance of the Permit, design treatment capacities for the City's POTW are 2810 lbs/day design daily average for TSS, and 3800 lbs/day design daily average for BOD.

29. On or about February 10, 1997, the City and Respondent executed an agreement titled "Agreement for Sewage Treatment Costs for Iowa Turkey Growers Cooperative" (the "Agreement"). The Agreement contains limits on the amount of TSS and BOD, among other pollutants, that the Facility may discharge into the POTW. However, although generally more stringent, the Agreement does not supersede the limits contained in the Permit.

30. Between November 13-16, 2000, EPA performed a compliance inspection of the City's POTW.

31. Between November 13-16, 2000, EPA performed a compliance inspection at the Facility.

IV. FINDINGS OF VIOLATION

Paragraphs 9 through 31 above are incorporated herein by reference.

32. The Facility's wastewater discharges exceeded the TSS and BOD 30-day average mass limits of the Permit on at least the following occasions:

Month/Year	Respondent's TSS Discharge, lbs/day 30-day Avg. (3000 lbs/day 30-day Avg. Permit Limit)	Respondent's BOD Discharge, lbs/day 30-day Avg. (4400 lbs/day 30-day Avg. Permit Limit)
March, 2000	3078	4598
April, 2000	3347	4976
May, 2000	3655	4589
June, 2000	3400	4948
July, 2000	3876	6003
August, 2000	4269	5375
September, 2000	4368	5519
October, 2000	4043	5028
November, 2000	3995	4821
February, 2001	3245	4966

33. The City violated the limits of the Permit on no less than the following occasions, as indicated by second column in the table below. On all of these occasions the Facility's TSS and BOD discharges placed a substantial load on the POTW's wastewater processing capabilities in relationship to the POTW's design capacities, and on most occasions exceeded the POTW's design capacities for TSS and BOD, as presented in the third and fourth columns in the table below.

Month/Year	City POTW's TSS Discharge lbs/day 30-day Avg. (343 lbs/day 30-day Avg. Permit Limit)	Respondent's TSS Discharge, lbs/day 30-day Avg. / [% of Plant Capacity] (POTW Capacity 2810 lbs/day)	Respondent's BOD Discharge, lbs/day 30-day Avg. / [% of Plant Capacity] (POTW Capacity 3800 lbs/day)
April, 2000	403	3347 [119%]	4976 [131%]
August, 2000	1177	4269 [152%]	5375 [141%]
September, 2000	1677	4368 [155%]	5519 [145%]
October, 2000	4681	4043 [144%]	5028 [132%]
November, 2000	3362	3995 [142%]	4821 [127%]
December, 2000	3638	1569 [56%]	2224 [59%]

January, 2001	540	1897 [68%]	3072 [81%]
February, 2001	592	3245 [115%]	4966 [131%]
March, 2001	3913	2679 [95%]	4243 [112%]

34. Additional TSS is generated by the POTW’s treatment and processing of BOD from the Facility’s process wastewater. This results in higher TSS loads within the POTW than would otherwise occur if BOD was not present in the Facility’s process wastewater.

35. On the occasions described in the table above, the Facility’s discharge of process wastewater to the POTW caused the pass through of TSS from the POTW and/or the interference of POTW’s treatment processes or operations.

36. The occasions of pass through and/or interference described in paragraph 35 and the table above are violations, by Respondent, of 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).

37. The occasions of pass through and/or interference described in paragraph 35 and the table above comprise 273 separate days of violation (i.e. the total number of days in the months listed).

V. ORDER FOR COMPLIANCE

Based on the 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 following actions to eliminate interference and pass through caused by its discharges of pollutants to the City of West Liberty’s POTW:

Discharges

38. Effective immediately, Respondent shall not discharge process or nonprocess wastewater to the POTW from its facility that contains the following:

Any pollutant, including oxygen demanding pollutants (BOD) or suspended solids (TSS) at flow rates and/or concentrations which will cause the pollutant to “pass through” the City’s POTW to the receiving waters of Wapsinonoc Creek, or cause “interference” with the operations of the POTW.

Monitoring

39. Within five (5) days of the effective date of this Order, Respondent shall designate a sampling location at a point within Respondent's discharge stream to the City's POTW that is capable of obtaining representative measurements and samples of all discharges of process wastewater into the POTW (This sampling location is hereafter referred to as "Plant Flow").

40. Within five (5) days of the effective date of this Order, Respondent shall hereafter monitor for the following parameters, at the specified location and frequencies:

<u>Parameters</u>	<u>Locations</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (gpd)	Plant Flow	Continuous	Meter
BOD	Plant Flow	1 per week	24 hour composite
TSS	Plant Flow	1 per week	24 hour composite
FOG	Plant Flow	1 per week	24 hour composite

41. Respondent shall conduct the monitoring described in paragraph 40 above, until notified in writing by EPA that such monitoring is no longer required.

42. Respondent shall handle and preserve all collected samples and laboratory analyses of samples required by this Order in accordance with the requirements of 40 C.F.R. Part 136.

43. Respondent shall ensure that all samples and measurements taken pursuant to this Order shall be representative of the volume and nature of the Facility's discharge. All samples shall be taken at the monitoring location specified in this Order only on days of normal production. All equipment used for sampling and analysis must be routinely calibrated, inspected and maintained to ensure their accuracy.

44. For all flow measurements required by this Order, Respondent shall employ a flow measurement device and method that are consistent with accepted scientific and industry practices to ensure the accuracy and reliability of measures of the volume of monitored discharges. Any devices selected shall be capable of measuring flows with a maximum deviation of less than 10 percent from true discharge rates. The device shall be installed, calibrated, and maintained to ensure that the accuracy of measurements are consistent with the accepted capability of the installed device.

45. The monitoring location shall not be changed without written approval by EPA. Further, in the event that EPA determines that the measurement and/or analytical devices and/or methods used by Respondent are inaccurate or unreliable, EPA may direct Respondent to employ specific measurement devices or methods capable of providing representative sampling and results.

46. For each day's sampling or measurements at the sampling location, Respondent shall complete a Sampling Report that contains the following information for all measurements, sampling and/or analyses taken during that day:

- a. The date, exact place, time and methods of sampling or measurements, and sample preservation techniques or procedures;
- b. Who performed the sampling or measurements;
- c. The date(s) analyses of samples were performed;
- d. Who performed the analyses;
- e. The analytical techniques or methods used to analyze samples; and
- f. The results of such analyses.

Monthly Reporting

47. Beginning with the first full calendar month following the effective date of this Order, Respondent shall submit to EPA a Monthly Monitoring Report, which shall be submitted on or before the tenth day of each month. The Monthly Monitoring Report shall contain the following information:

- a. A summary of the results of all samples and monitoring taken by Respondent during the prior calendar month (reporting period) that describes all instances where the sample results demonstrate exceedances of the effluent limits set forth in paragraphs 26 and 27, above; and
- b. Copies of all Sampling Reports for the prior calendar month.

Additional Reporting

48. Respondent shall notify EPA at least ninety (90) days prior to any facility expansion, production increase, or process modifications which may result in new or increased discharges or changes in the nature of the discharge from Respondent's facility.

49. Respondent shall notify EPA at least ten (10) days prior to implementing any planned operational changes at its facility which may result in violation of the requirements set forth in paragraph 38, above.

b. A description of the duration of the upset, including exact dates and times of noncompliance with the effluent limits set forth in paragraphs 26 and 27 above, and if not corrected by the date of the notice, the anticipated time the noncompliance is expected to continue.

Submissions

51. All documents required to be submitted to EPA by this Order shall be submitted by mail to Mr. Paul Marshall, Pretreatment Coordinator, at the following address:

United States Environmental Protection Agency-Region VII
NPDES and Facilities Management Branch
901 N. 5th Street
Kansas City, Kansas 66101

52. All submissions made by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification that is signed by a responsible corporate officer or plant manager:

“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.”

Effect of Compliance with the terms of this Order for Compliance

53. Compliance with the terms of this Order shall not relieve Respondents of liability for, or preclude EPA or the State of Iowa from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seeking additional injunctive relief,

pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.

54. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain and comply with any required local, state and/or federal permits.

55. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address additional noncompliance with the CWA, including but not limited to additional non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this Order.

Access and Requests for Information

56. Nothing in this Order shall limit EPA's right to obtain access to and 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.

Severability

57. 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 remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Waiver

58. 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), 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.

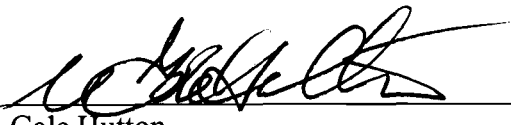
Effective Date

59. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

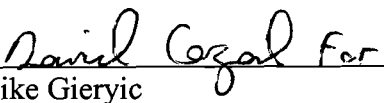
Termination

60. 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 June, 2001.



U. Gale Hutton
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region VII



Mike Gieryic
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region VII

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing 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 correct copy of the same to the following:

M. Daniel Waters
Registered Agent for
Iowa Turkey Growers Cooperative
666 Walnut Street, Suite 2500
Des Moines, IA 50309-3993

Lon Pluckhahn
City Manager
City of West Liberty
409 North Calhoun
West Liberty, Iowa 52776

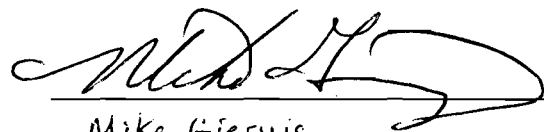
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JUL 5 2001

Date



Mike Gieryic