

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
International Dehydrated Foods, Inc.) Docket No. CWA-07-2012-0043
700 South Chapell Drive)
Monett, Missouri 65708) CONSENT AGREEMENT/
) FINAL ORDER
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and International Dehydrated Foods, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, and Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is International Dehydrated Foods, Inc. (IDF) a corporation under the laws of Missouri and authorized to conduct business in the state of Missouri.

Statutory and Regulatory Framework

5. 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.

6. 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.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as facilities classified as Standard Industrial Classification 20 - Food and Kindred Products.

11. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. MDNR implemented a General Permit for the discharge of stormwater under the NPDES, on May 30, 2008. The permit governs stormwater discharges associated with industrial activity for textile manufacturing, apparel manufacturing, printing/publishing operations, paper and allied products manufacturing, paper-only recycling, and food and kindred products

manufacturing.

Factual Background

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

14. At all times relevant to this action, Respondent was the owner and/or operator of a facility known as International Dehydrated Foods, Inc. (IDF) located at 700 South Chapell Drive, Monett, Missouri 75708 (the Site).

15. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into an unnamed tributary of Clear Creek. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

16. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Respondent discharged pollutants into Kelly Creek, an intermittent tributary of Clear Creek, “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

19. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

20. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. MDNR issued the Respondent NPDES Permit No. MOR130136, which became effective on May 30, 2008, and expires May 29, 2013. The permit governs stormwater discharges associated with industrial activity.

22. On or about January 24–25, 2012, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the Site in accordance with the CWA.

Findings of Violation

Count 1

Inadequate Stormwater Pollution Prevention Plan (SWPPP)

23. Part 1 of the Requirements Section in Respondent's NPDES permit requires the facility to develop a Stormwater Pollution Prevention Plan (SWPPP). The permit lists areas that must be included in the SWPPP, specifically: industrial plant yards, material handling sites, intermediate products, finished product, by-product or waste product, sites used for the storage and maintenance of material handling equipment, shipping and receiving areas, manufacturing buildings, and storage areas for raw materials and intermediate and finished products. The permit also requires the facility to provide a list of potential contaminants and an annual estimate of amounts that will be used in the described activities.

24. Part 1 of the Requirements Section in Respondent's NPDES permit requires the facility to develop a narrative description explaining how BMPs will be implemented to control and minimize potential contaminants that may enter stormwater.

25. The EPA inspection referenced in Paragraph 22, above, documented that IDF's SWPPP identifies two areas that are potential sources of stormwater, but does not go into any detail in each of those areas. Specifically, the chicken slurry load-out area is identified as a potential source of contamination but it does not list the annual estimate of amounts used for load-out activity, nor is there any type of structural BMPs identified to control runoff activities from spills that could occur in the area.

26. The EPA inspection referenced in Paragraph 22, above, documented a number of sources that could have the potential to cause stormwater contamination that were not clearly listed or defined in the SWPPP. Specifically, the material storage areas, chemical/oil storage, waste storage and handling operations, wastewater treatment, loading/unloading areas, truck cleaning, and pavement cleaning.

27. The EPA inspection referenced in Paragraph 22, above, Respondent's SWPPP does not address a number of locations south of the facility building where materials are handled outside of the building. Specifically, the SWPPP needs to identify areas such as chemical handling, wastewater treatment, scrap storage, waste storage and handling, materials storage, truck cleaning, and pavement cleaning.

28. Respondent's failure to develop and maintain a SWPPP that includes all required elements is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Count 2

Failure to Maintain Good Housekeeping Practices

29. Respondent's NPDES Permit requires that good housekeeping practices be maintained to prevent solid waste from entering waters of the state.

30. The EPA inspection referenced in Paragraph 22, above, documented that the facility was storing chemical paint, solvents, petroleum products and petroleum waste products, and storage containers in a location where they were exposed to stormwater. The drums were not in

any type of secondary containment structures and some were open to the environment. Spillage and straining was observed around some of the containers.

31. During the EPA inspection referenced in Paragraph 22, above, the inspector observed poor housekeeping practices onsite. The inspector documented that the chicken slurry load-out area had an offsite discharge leading to water. In addition, a number of non-stormwater related pools of liquid or staining around the facility building were also noted by the inspector.

32. Respondent's failure to maintain good housekeeping practices is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

33. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the violations cited above.

CONSENT AGREEMENT

34. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

35. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

36. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by EPA in the Factual Background and Findings of Violation sections set forth above.

37. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CAFO.

38. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

40. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

41. This CAFO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

42. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

43. The effect of settlement described in Paragraph 41 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 42 above, of this CAFO.

44. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental and/or public health benefits. Respondent shall replace the existing open-air chicken slurry load-out area, reducing the exposure of pollutants to storm water, at a cost of no less than Two Hundred Thousand Dollars (\$200,000), in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

45. The total expenditure for the SEP shall be no less than \$200,000 and the SEP shall be completed no later than 270 days from effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

46. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented; and
- (ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.
- (iii) All reports shall be directed to the following:

Dr. Delia Garcia
Water Enforcement Division
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

47. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

48. Respondent agrees to the payment of stipulated penalties as follows: In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraphs 44 and 45 of this CAFO and/or to the extent that the actual expenditures of the SEP does not equal or exceed the cost of the SEP described in paragraphs 44 and 45 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) and (c) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraphs 44 and 45 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Forty-Four Thousand and Fifty-Five Dollars (\$44,055), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 150% of the mitigated SEP amount.
- b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 46, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250).
- c. If the SEP is not completed in accordance with paragraphs 44 and 45 of this CAFO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

49. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

50. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

51. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

52. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement

(unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

53. Any public statement in print, film or other communications media, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in paragraph 48 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

55. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

56. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Nine Thousand Six Hundred and Thirty Dollars (\$9,630) to be paid in full no later than 30 days after the effective date of this CAFO.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.

3. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

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

This payment shall reference docket number CWA-07-2012-0043.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

5. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

General Provisions

6. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

8. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
INTERNATIONAL DEHYDRATED FOODS, INC.

Date

Name (Print) _____

Title _____

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Regional Judicial Officer

Date